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ABSTRACT

This symposium for the general public was designed to foster citizen awareness and evaluation of and response to changes in the traditional availability of federal government information that limit public access. Following a list of acknowledgements and the program schedule, welcoming remarks by Maxine R. Haggerty, chair of the Utah Library Association Government Documents Round Table (GODART), and introductory remarks by Ted Wilson, Director of the Hinckley Institute of Politics, are presented. In addition, the full text is provided for the following symposium panel presentations: (1) "President Reagan, the Regulars Are Coming!" (J. D. Williams); (2) "Trends in Our Society and Government That Are Challenging Traditional Concepts of Access" (Eileen D. Cooke); (3) "Issues in the Management and Dissemination of Federal Information" (Kenneth B. Allen); (4) "Information, Please! The Human Costs of the Information Shortage" (Donna A. Demac); and (5) "Legal/Constitutional Aspects of the Changing Patterns of Access" (Scott M. Matheson, Jr.). An edited transcript of the questions and answers that followed the panel discussion are also included, and brief biographies of the panel participants are provided. (Author/KM)

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PROCEEDINGS

OF THE

SYMPOSIUM ON PUBLIC ACCESS TO FEDERAL GOVERNMENT INFORMATION

Salt Lake City, Utah

February 7, 1986

HELD AT THE

University of Utah Union Building
Saltair Room

SPONSORS:

The Utah Library Association Government Documents Round Table
and
The Hinckley Institute of Politics

EDITORS:

Maxine R. Haggerty
Chair of the Symposium Steering Committee
and
Ruth A. Frear
Editor of HATU,
Official Newsletter of the Utah Library Association

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ACKNOWLEDGEMENTS

SYMPOSIUM SPONSORS

Government Documents Round Table,
Utah Library Association
(ULA GODORT)

Formed as a subdivision of the Utah Library Association to promote the use of government documents. ULA GODORT has a membership of librarians from all types of libraries in Utah.

Hinckley Institute of Politics,
University of Utah

Established on the University of Utah campus to promote the principle of citizen involvement in government.

SYMPOSIUM FUNDERS

Utah Library Association
(ULA)

Organized as the professional association of librarians in the State of Utah.

Utah College Library Council
(UCLC)

Organized to foster the development and implementation of cooperative services throughout the Utah academic community. Ten of the twelve federal government depository libraries in Utah are located in academic libraries.

Government Documents Round Table,
The American Library Association
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Organized at the national level to promote the use of government documents. Dedicated to the principle of open and equitable access to government information.

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TRANSCRIPTION -- COMPUTER ENTRY -- PROOFREADING

Maxine R. Haggerty transcribed the following parts of the symposium from tapes of the proceedings: The speech by J. D. Williams, the moderator's introductory remarks, and the questions and answers.

Charmaine R. Moulton assisted with the computer entry and formatting of the proceedings.

Julianne P. Hinz and Michele T. Ruhlin proofread the copy.

PROGRAM SCHEDULE

8:30 - 9:00	REGISTRATION	
9:00 - 9:15	WELCOME AND ACKNOWLEDGEMENTS	
	Maxine R. Haggerty	Chair, Utah Library Association Government Documents Round Table
	Ted L. Wilson	Director, Hinckley Institute of Politics, University of Utah
9:15 - 9:45	PRESIDENT REAGAN, THE REGULARS ARE COMING!	
	J. D. Williams, Ph.D	Professor, Political Science Department, University of Utah
9:45 - 10:15	TRENDS IN OUR SOCIETY AND GOVERNMENT THAT ARE CHALLENGING TRADITIONAL CONCEPTS OF ACCESS	
	Eileen D. Cooke	Director, American Library Association Washington Office
10:15 - 10:30	BREAK	
10:30 - 11:00	ISSUES IN THE MANAGEMENT AND DISSEMINATION OF FEDERAL INFORMATION	
	Kenneth B. Allen	Vice President, Information Industry Association; formerly with the U.S. Office of Management & Budget
11:00 - 11:30	INFORMATION PLEASE! THE HUMAN COSTS OF THE INFORMATION SHORTAGE	
	Donna A. Demac	Attorney and Author, Keeping America Uninformed: Government Secrecy in the 1980's. (New York, Pilgrim Press, 1984.)
11:30 - 12:15	QUESTIONS AND ANSWERS	
12:30 - 1:15	LUNCH	
1:15 - 1:45	LEGAL/CONSTITUTIONAL ASPECTS OF THE CHANGING PATTERN OF ACCESS	
	Scott M. Matheson, Jr.	Associate Professor, College of Law, University of Utah
1:45 - 2:00	QUESTIONS, WRAP-UP, EVALUATION	

GODORT CHAIR'S WELCOMING REMARKS

Maxine R. Haggerty, Chair
Government Documents Round Table
Utah Library Association

Good Morning. I am Maxine Haggerty, Chair of the Utah Library Association Government Documents Round Table, better known as ULA GODORT. On behalf of the Utah Library Association and the Hinckley Institute of Politics, I welcome all of you to the Symposium on Public Access to Federal Government Information.

I want to take a moment to recognize the groups and people who have made this meeting possible. First, let me extend appreciation to our major funder, the Utah Library Association and its current President, Connie Lamb as well as to the Chair of the ULA Finance Committee and ULA Past President, Brad Mauer. Also, I want to thank another funder, the Utah College Library Council and it's current President, Wayne Peay. Finally, I want to acknowledge our third funder, the Friends of Documents Committee of the American Library Association Government Documents Round Table. And we appreciate the co-sponsorship of the Hinckley Institute -- Ted Wilson, Director, and Bae Gardner, Assistant Director.

Next, it is my pleasure to recognize the Symposium Steering Committee that planned and worked on this program. It is composed of representatives from several sections of ULA: Douglas Abrams, Chair of the Academic Section; Anna DeMiller, Vice Chair/Chair Elect of the Reference and Adult Services Section; Jennifier Angier of the Special Libraries Section; Dennis Day of the Public Library Section; Juli Hinz, Chair of the Continuing Education Committee of GODORT; and Sally Patrick of the Public Library Section, who brought us her special expertise in media and public relations. Let me also mention Marriott Library staff members, who were not on the Committee, but who assisted in several ways. Two members of the Documents Division staff worked on the display

of "Endangered Documents," which is on the table in the back of the room: Michele Ruhlin pulled the items together and wrote the annotations, Dylan Dillon typed up the list, and Lenora Berendt duplicated it. Terry Fahy, of Acquisitions, produced the packet labels on the MacIntosh. And Ruth Frear, of Computer Aided Reference, is assisting Ralph Kranz, head of the Audio Visual Division, in the taping of today's symposium.

Please notice the items in the packet you received at the door. There are some regular size sheets of paper for taking notes. The smaller pieces of paper are to be used for writing down questions to submit to the speakers. Please put only one question on a piece of paper and pass it up to Ted Wilson, who will read each one at the microphone. When all of the written questions are read and answered we will take questions from the floor.

Also, note the yellow evaluation sheet in your packet. We hope that each one of you will fill it in and leave it on the table by the door as you go out.

On the registration table we have copies of Donna Demac's book, Keeping American Uninformed. It is the paperback edition that sells for $8.95. Also, there are copies of ALA's Less Access to Less Information, for $1.00 each.

Now, why are we here? Because times are changing and we need to know what is happening to the most valuable resource available to citizens of a democratic society -- information. For about 10 years librarians have been observing, experiencing, and discussing the trends and changing patterns in access to all kinds of information. Librarians in the federal depository libraries have been especially sensitive to the changes in access to federal government information as we carry out our daily professional responsibilities of providing information to our patrons. We are among the first to discover that a publication has ceased, or that a publication is no longer free, or that the price of a publication has increased. It is librarians who must tell the public, "Yes, we

can get the information you need from an electronic database -- but for a fee."

So, the Steering Committee members of the ULA Government Documents Round Table agreed it was time to share our experience and concerns on the issue of access with the public in a formal way. While the Round Table has been very active within ULA, this is the first time we have brought a program to the general public.

There are no simple answers to the concerns and issues we will confront today. We do not expect a concensus. However, we do have four goals today:

1. To help all of us appreciate our special heritage of access to our government's information;

2 To help us become aware of the trends and changing patterns of access;

3. To give us an opportunity to consider and evaluate the pros and cons of the issues involved;

4. And to encourage us all to be effective citizens in our democratic society -- to make our informed opinions and desires known to our elected and appointed leaders -- to participate, to affect our own future.

To accomplish these goals, we have selected a panel of knowledgeable, involved people to present the issues to you. Two are from this community and three represent groups at the national level. Ted Wilson will be our moderator. He will introduce each speaker, take your questions, and at the end help us pull together the highlights of the ideas presented by our speakers.

While Ted really needs no introduction, let me just say that Ted exemplifies the effective citizen in our democratic society. He first served his community as an educator, then stepped into the public arena and served again as the elected Mayor of Salt Lake City for 9 years, leaving in the early part of his third term to become the director of the Hinckley Institute of Politics here at the University of Utah.

So, without further comments, I give you Ted Wilson.

MODERATOR'S INTRODUCTORY REMARKS

Ted Wilson
Director, Hinckley Institute of Politics

We are here at this Symposium on Public Access to Federal Government Information because there is a problem, and that problem is access. A free people is a people that have access, that have enlightenment; we can't be enlightened otherwise. It is my pleasure to be with you this morning and, it is also the pleasure of the Hinckley Institute to be a co-sponsor of this forum; and we're delighted to have the speakers that we have, both local and national, to be with us, experts who can tell us about various segments of this problem, elicit our thinking, and maybe, by the end of the day we'll have a couple of answers, if not all of them. And maybe we won't even have a couple. At least we'll all leave better directed and better motivated.

We all like to pay allegiance to certain principles. Many things in our society are apple pie. Certainly openness in government, access to information, is apple pie. There is not a politician in the world that would run on a platform that "I'm going to close the doors of government." We all run, speaking of myself and other political leaders, when we run for office, on a policy of openness. However, certain things come into play. Once we get into office we begin to think in proprietary terms; we tend to think we own the office; then we become benevolent in the sense that we would like to dictate, benevolently, and then it become easy to close doors, close meetings, and tell my city -- call down there and say -- if a citizen comes down there and needs some information on the stop signs on Eleventh Avenue, maybe the information is not available. I've never really done that, but I'm sure that subconsciously that phenomenon works in government.

It reminds me of a story, when we talk about principles we pay allegiance to. Some of you may have heard this story -- it's been around awhile. It's a story about a man who was out driving through the countryside one day, and he saw a pig with a wooden leg. A very unusual sight. He pulled over quickly, drove up to the farmer's house and knocked on the door. When the farmer came to the door he said, "Sir, I never before in my life have seen a pig with a wooden leg. Could you explain that to me?" The farmer said, "Oh, I'd love to." So, the farmer walked out of the house, over to the pigsty, and they stood there looking at this pig with the wooden leg. The farmer said, "It's very simple. This pig is brilliant. He used to bring the other pigs in at dinner time, help organize them in orderly lines, and I would feed them. He would often play with my children, catch balls, play frisbee with them, and do various things that you wouldn't think a pig would be able to do. So, we loved this pig. This pig is part of our family. One day I was out in my tractor, and I backed it into a bog, and it tipped over. As I was going down through the muck and the mire to my certain drowning death, the pig grabbed a pole and stuck it into the pond and pulled me out. We <u>loved</u> this pig. Any pig that would treat a family like that should only be eaten one leg at a time.

Well, the question is, are we eating our public access one leg at a time? Do we have a public access system with a wooden leg? You might think about it.

Let's get going here. I've exhausted my time. Let me introduce to you a very special friend of mine. I have to burn a little incense in this particular introduction because this man means so much to me, personally. He's probably the reason I got into politics, so, if you don't like what I did in city hall, you can blame this fellow. J. D. Williams is a great, and inspirational teacher. He has inspired many young people into a career in politics because of his vibrant, eloquent and meaningful teaching. He's been a professor of

political science at the University since 1952. He was even up here at the University before I was, which is really saying something. J. D. carries his own convictions into his teaching. He is outspoken; he is often controversial; and he likes to stir it up, because he knows that only when it is stirred up that people really respond. He also has great convictions upon which he bases his ideas. He's been honored at the University. He is currently serving as University Professor, which is a distinguished title given only to those on the campus who have distinguished teaching, academic records. He is organizing the Bicentennial Celebration for our Constitution, which unfolds this coming year and will be a very exciting program. I hope you'll all get involved in that. He has received the Utah Bar Award for Contributing to a Free Society under Law. Like I said, J.D. likes to tell it the way he sees it. This morning I think you'll see what I mean. J. D. has asked me to indicate that his remarks this morning do not necessarily reflect those of his department or the University. So, I think, we're going to hear something straight from J. D. this morning. He will speak to his title, "President Reagan, the Regulars Are Coming." J. D. Williams.

PRESIDENT REAGAN, THE REGULARS ARE COMING!

J.D. Williams
Professor of Political Science
University of Utah

I surmise, my friends, that on the 18th of April, 1775, when the sexton in the Old North Church was getting ready to make the dash up the stairs to light the two lanterns, he didn't spend two seconds telling jokes with his wife. And that when Paul Revere was getting saddle on horseback, there was no time for barnyard stories with the yardhand as he prepared to make his dash to Lexington and Concord. I'm in that same mood this morning, and thus, I am going to apologize for not engaging in the normal pleasantries of the keynote address, because they could not help but detract from the seriousness of the situation as I see it.

I think our constitutional house is on fire, and I mean to sound the alarm from this place. I repeat Ted's caveat [in his introduction for me] because this speech is going to be extraordinarily controversial. I detach myself from my employer. I speak to you today as Citizen Williams, even though this is a magnificent university that allows all the winds of freedom to blow. My purpose is to summarize the record of the Reagan Administration under the First Amendment and then suggest what I think must be done to stop the hemorrhaging of liberty in this country.

I need to express my debt to the librarians of America and of this State for awakening us to the dangers. At another time, fourteen years ago, it was newspaper reporters like Woodward and Bernstein of the Washington Post and the New York Times and CBS and the like. Now, it seems to me as I delve deeply into the record in preparation for you this morning, that the people on the front line happen to be sitting in this room. I express my gratitude, as a citizen,

to them and to you all. Secondly, I want to express my particular indebtedness to an editor at Harper's, by the name of Walter Karp. It may be that a number of us are going to be dependent upon him. I'm going to be very dependent upon him in relating this historical record. The article: "Liberty under Siege," Harper's, November, 1985.

We begin with the chronology of censorship in the Reagan Administration in his first year of office, 1981 -- the year that would see the introduction of an old and valued tool in budgetary theory called cost/benefit analysis, with a new application as the razor's edge of what governments could publish. It was a year that would see the beginning of the Reagan Administration campaign to delimit the Freedom of Information Act and the shocking action of the President of the United States on the 4th of December, 1981, to authorize the Central Intelligence Agency to engage in domestic surveillance against American citizens. In my judgment, it was in blatant violation of the National Security Act of 1947, which restricts the CIA to external surveillance. [I tell you this] by way of a quick overview of what would come with extraordinary speed in the first year.

In April of that year, three months after inauguration, Reagan imposes a moratorium on any new government publications and the elimination of wasteful expenditures on a number of existing ones. Note one of the first to go by the wayside -- the CIA report on U.S.-Soviet military expenditures -- just as Ronald Reagan launches the biggest arms buildup since World War II. Now we would be deprived of one of the ways of measuring whether any of that buildup was necessary.

July 10th. Thirty thousand subscribers of the Cuban weekly, I'll say it auf English, Grandma, were notified that they would now have to obtain import licenses from the Treasury in order to receive the publication. The order was

clearly unconstitutional. If Reagan knew something about constitutional law, or if his lawyers in the Justice Department had done their homework, they would have know about Lamont v. the Postmaster General in 1965. The device then was not import licenses; the device was, that if you wanted to get communist material, you had to return a postcard to the Post Office Department which would say, "Send me my communist mail," from which a list could then be prepared. The Supreme Court, in 1965, by an eight to nothing vote, held it unconstitutional. The Court spoke through Mr. Justice Douglas, quote, "We conclude that the Act [the Postal Reform Act of 1962, that set up this machinery] as construed and applied, is unconstitutional because it requires an official act (to wit, the returning of the card) as a limitation on the unfettered exercise of the addressee's First Amendment rights, as stated by Mr. Justice Holmes," much earlier. Quote, Justice Holmes: "The United States may give up the Post Office when it sees fit, but while it carries it on, the use of the mails is almost as much a part of free speech as the right to use our tongues." Lamont v. the Postmaster General [says] that interference with the right of the freedom of people to read is blatantly unconstitutional. Thank God, this early censorship of the Reagan Administration, auf Grandma, was finally stopped by an American Civil Liberties Union lawsuit, later on that year.

1982. In March, the Administration warns scientists that they can be fined $100,000 for discussing technical data with a single foreign student unless they obtain a government license. Now, you talk about an administration that wants to get government off our backs, and it is now going to require scientists in academic institutions to get a license to carry on a discussion with a single foreign student if it involves technical data in the scientist's field of interest! An assistant secretary of commerce, by the name of Lawrence Brady, indicates that the Administration is going to combat the strong belief in the

academic community that they have inherent right to conduct research free of government review and oversight. Now the evil hand of monism is going to extend into new corners of America to see to it that scientists understand, if not whom they work for, at least to whom they are accountable.

June. The Office of Management and Budget orders the Nuclear Regulatory Commission to suspend some safety regulations for nuclear power plants without any notification to those who live near the plants. Suddenly, the right to live becomes wholly dependent upon the right to know, and Reagan has snuffed that out.

1983. On the twenty-fourth of January, the Office of Management and Budget revises Circular A-122, "Cost Principles for Nonprofit Organizations," which threatens organizations such as the Girl Scouts and the Association for Retarded Citizens with the loss of federal grants if they speak out on public affiars. Is this OMB's understanding of "a wide open, robust First Amendment?" A senior Republican on the House Government Operations Committee looking at Circular A-122, Representative Frank Horton, said, quote, "I cannot believe that this could possibly be the intent of the Administration, and yet the language is painfully clear."

Gradually, the coverup masked in cost/benefit became clear. While cutting social programs right and left, Reagan then stops funding the Survey of Incomes and Program Participation, which assesses the Administration's welfare policies; stops publishing the Annual Survey of Child Nutrition and the Annual Housing Survey. The explanation is very clear to me: "Don't let the critics see that your budget cuts have riddled the 'safety net'." A new standard emerges in this Administration: "Cut and don't tell; let those who wear the shoes find out what we've done to them."

March 3rd. The Reagan Administration denies a visa to the widow of Salvador Allende from Chile to come to San Francisco for speeches -- a frontal denial of

the right of American citizens to hear and understand their extraordinary complicity in the overthrow of the Allende government in 1971. Mrs. Alllende cannot come to the country of the First Amendment.

March 11th. Reagan revises National Security Directive 84, imposing lifetime censorship -- lifetime censorship -- on all government employees with access to "sensitive, compartmentalized information." A Reagan PR man was asked,"How many government employees will now be subject to lifetime censorship?" His cutesie answer, "A handful." The actual number: 128,000 officials. And how many damaging leaks had emerged from this group in the preceding five years? Not one. Not one. Thank goodness the checks and balances system once again saved us in October when the Senate voted down this attempt at lifetime censorship regimentation.

September 12th. Reagan extends his cost/benefit censorship still further. All government information agencies henceforth must convince the White House that the information they intend to release will pass the cost/benefit test. Now the monkey is on the back of the distributing agencies to prove to the White House that the benefits will exceed the costs. This blessed organization, the American Library Association, then puts it in one simple question: "What is the dollar benefit of an informed citizenry?" Ronald Reagan would answer on the 19th of October, "You can't let your people know without letting the wrong people know -- those who are in opposition to what you're doing." Shades of Richard Nixon! Critics are enemies! Is an enemies' list just around the corner?

1984. I must say, the plot thickens. On the third of January, now having only two days go to waste since the year began, Justice Department lawyers obtain an injunction barring a publisher from publishing an opinion of a Colorado judge who had rebuked three Justice Department lawyers. Now, note, the Government tries to prevent a book from being published. The Justice Department

in this action is now resurrecting an infamous doctrine called seditious libel and a companion doctrine called prior restraint. But the 10th Circuit lifts the injunction, remembering full well the expanded meaning of the First Amendment, "Neither the Congress nor the President shall abridge the freedom of the press." The last time such censorship was attempted, I can remember, was also instigated by the Department of Justice under one of my least favorite Americans, named John Mitchell, to prevent the New York Times from publishing the Pentagon Papers in 1971.

This next quotation is of substantial length. Will you bear with me as I now quote Mr. Justice Black in a very disperse Court, but at least a Court that cancelled the injunction on those newspapers. He said:

> In my view it is unfortunate that some of my Brethren are apparently willing to hold that the publication of news may sometimes be enjoined. Such a holding would make a shambles of the First Amendment.... Now, for the first time in the 182 years since the founding of the Republic, the federal courts are asked to hold that the First Amendment does not mean what it says, but rather means that the Government can halt the publication of current news of vital importance to the people of this country....
>
> In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people.
>
> Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell. In my view, far from deserving condemnation for their courageous reporting, the New York Times, the Washington Post, and other newspapers should be commended for serving the purpose that the Founding Fathers saw so clearly. In revealing the workings of government that led to the Viet Nam War, the newspapers nobly did

precisely that which the Founders hoped and trusted they would do.

Essentially, he is saying that the First Amendment intended that no government would ever be able to hide its tracks from the American people. And the accumulative record that Karp and I are summarizing today indicates the degree to which this Administration is trying to cover its tracks from the American people.

Late January, 1984. Two Air Force investigators warned an American University professor, one hour before his speech on arms control verification at a professional conference, that if he gave the paper he would be prosecuted under the Espionage Act of 1917. Let's just bring this close to home. Had informants in security agencies of this Government understood the tenor of this address this morning, that would have been replicated at the Union Information Desk by some gumshoe of the federal government indicating that, "Williams, if you give this speech, there is a 1917 statute that we're going to use against you. Don't do it." What a tragedy that Ronald Reagan never read John Stuart Mill: "If all mankind, save one, should be of one opinion, they would have no more right in repressing him than he would have in repressing them."

November 20th. The Department of Defense imposes a gag order to prevent any dissemination of information outside of the Department concerning technical data pertaining to contractor performance or the results of tests of military hardware. Don't disclose information in either of those two areas outside the Department, said the order. Here, a cover-up to hide from the American people the disasters in the Reagan-Weinberger military buildup -- the corruption of General Dynamics and General Electric, the rigging of tests on the failed Sgt. York anti-aircraft gun, etc. That is what they wanted to prevent us from saying. John Milton provides the right reply:

> What should ye do then? Should ye suppress all this flowery crop of knowledge and new light sprung up and yet springing daily in this city? Should ye set an oligarchy of twenty engrossers over it, to bring a famine upon our minds again, when we shall know nothing but what is measured to us by their bushel? Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.

November, 1984. The Reagan Administration opens a grand jury investigation of author Antoni Gronovicz and his book about Pope John Paul, God's Broker, under a mail fraud statute -- a mail fraud statute -- in an attempt to punish falsehoods in the book. So, perhaps, for the first time since Memoirs of Fanny Hill v. Massachusetts, 1966, we had a book on trial in America. Ronald Reagan, since you don't know Mill and the evils of censorship, would you at least listen to Oliver Wendell Holmes, dissenting in an earlier censorship case, Abrams v. the United States, 1919:

> When men have realized that time has upset many fighting faiths, they may choose to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.

Ronald Reagan, are you listening?

The saga of censorship under Ronald Reagan continues to the present. On the twelfth of December, 1985, OMB Circular A-130 placed further restrictions on the

gathering and dissemination of information. There is no stopping of the hemorrhaging.

Now, the record traced here is a strange reflection on an administration that had talked about getting government off the backs of American citizens. Did that really mean, instead, blinding our eyes, plugging our ears, and gagging our mouths? Walter Karp has clearly demonstrated that, "This Administration believes that an enlightened citizenry is a menace to the state." It has turned cost/benefit analysis into a vicious tool of censorship: cost/benefit, of enormous cost to us and solely to benefit them.

In the calm, documented prose of my dear friend, Valerie Florance, these have been the results of that censorship: "Fewer titles being produced; fewer free copies of the titles which are produced; fewer titles available for sale; modification in format, especially the shift to microfiche; and price increases and user fees." That, at the moment, is the epitaph of the whole rotten record.

Now, hear Walter Karp's summation:

> Imagine a faction that would throw honorable men into prison so that it could impoverish the public treasury with impunity and bend a sovereign people to its will, not just this year and the next, but long after it has fallen from power. Imagine a venerable republic, the hope of the world, where the habits of freedom are besieged, where self-government is assailed, where the vigilant are blinded, the well informed gagged, the press hounded, the courts weakened, the government exalted, the electorate degraded, the Constitution mocked, and laws reduced to a sham so that, in the fullness of time, corporate enterprise may regain the paltry commercial freedom to endanger the well-being of the populace. Imagine a base-hearted political establishment, 'liberal' as well as 'conservative,' Democratic as well as Republican, watching with silent, protective approval this lunatic assault on popular government. Imagine a soft-spoken demogogue, faithful to nothing except his own faction, being given a free hand to turn Americans into the enemies of their own ancient liberties. Imagine this and it becomes apparent at last how a once-great republic can be despoiled in broad daylight before the unseeing eyes of its friends.

But thanks to the Walter Karps, the Washington Post, the American Library Association, the librarians sitting here, the wool has been lifted from our eyes; what we once saw through a glass darkly we now see in glaring technicolor: An administration that detests the First Amendment and lives in fear of the right of the people to know. That, I think, we now understand.

Well, my friends, now is the time to act:

- to reproduce the Karp article (Harper's, November, 1985) and send it far and wide;

- for the ALA to republish it;

- to persuade journals wherever you have influence to republish it;

- to get resolutions adopted (of the kind I am about to propose) in all our professional organizations until our wrath rolls down like water and justice as a mighty stream upon this Administration;

- to marshall the full power of Madison's checks and balances, to let ambition counteract ambition -- are you ready? -- and that translates into Representative Peter Rodino, chair of the House Judiciary Committee. I see no other course but to petition him, for the second time in his career in the House, to open an impeachment investigation of a sitting President of the U.S. His name is Ronald Reagan.

[Impeachment proceedings against President Reagan are warranted for:]

- stifling the flow of news from government to the American people;

- harassing authors and speakers;

- threatening domestic organizations if they speak out on public issues;

- reinstituting the heinous doctrines of seditious libel and prior restraint; and

- replacing a wide open, robust First Amendment with the callous censorship of cost/benefit analysis.

In all of these actions, Ronald Reagan has, with contempt, infringed upon the First Amendment, and has thus violated his solemn duty to preserve, protect and defend the Constitution of the United States.

I hope that this convention contemplates, this afternoon, acting in some such fashion. When I go to the meeting of the Western Political Science Association in Oregon in March, I shall so propose it; to the American Society for Public Administration in Anaheim, California, in April, I shall so propose it. And I urge you, in the spirit of what I have said for the distribution of the Karp article, that in any organization where you have membership and influence, to attempt to get that kind of revolution rolling, until Peter Rodino and his associates on the House Judiciary Committee cannot possibly ignore the pressing nature of preserving and protecting the First Amendment.

We began with Paul Revere. I conclude with him. As he pounded the cobblestones through Lexington on his way to Concord, I surmise he stirred up a heck of a fuss. And sleeping townspeople leaned out of their windows, "Please shut down that noise." And he said, "You'll have noise aplenty here; the regulars are coming."

The regulars are you and I. And standing boldly, now, and doing these things, we shall preserve the fairest winding sheet of all: Freedom now, free forever.

TRENDS IN OUR SOCIETY AND GOVERNMENT THAT ARE CHALLENGING TRADITIONAL CONCEPTS OF ACCESS

Eileen D. Cooke, Director
American Library Association
Washington Office

It is a decided pleasure to be here today to exchange views with this distinguished panel of speakers. The collective breadth and depth of knowledge gathered here, based on academic credentials and work experience, is impressive indeed. However, I am particularly pleased and proud to be here because the idea and planning for this symposium was initiated by members of the Government Documents Round Table of the Utah Library Association and the American Library Association.

Since my topic is of global dimensions and my time is a finite 30 minutes, please bear with me as I tick off a basic list of issues which, as I see it, have played a significant role in heightening our awareness of the increasing problems of citizen access to library and information services in particular and federal government information in general.

In 1973, the country's energy shortage began driving up the costs of resources containing petro-chemical elements (audiovisuals, microforms, plastic materials). It also made us acutely aware of the need to educate governmental authorities at all levels regarding the critical importance of essential temperature and humidity controls in libraries and archives. For example, invaluable rare books and documents were in jeopardy from mold and mildew because of a national policy to save energy by pushing up thermostats in summer. Because of gasoline shortages and prohibitively high prices, bookmobiles were taken out of service to people in remote areas, cutting off their access to library and information resources.

As books deteriorated on library shelves throughout the country, preservation techniques came front and center with understanding of the need to deacidify paper. Irreplaceable volumes were, and still are if left untreated, turning to yellow dust on library shelves. Also, there was increasing need to look at automation and new technology, not only to preserve but to conserve space and save construction costs, to expedite information delivery, and to reduce personnel costs and deadend jobs.

Increasing appreciation for the significance of the Freedom of Information Act led to awareness of the other side of the coin -- concern for the right of the individual to confidentiality under the Privacy Act.

The passage of the Copyright Act of 1976 unleashed a whole series of still unfolding issues, dealing with new technology, e.g. computer software, video-taping off the air, rental of audio and video tapes, videodisc applications, computer chip protection, and international copyright privacy control through trade and tariff agreements.

A general-revision review of Title 44 of the U.S. Code, covering government printing and binding and the depository library system in 1979 led to a report from the Joint Committee on Printing entitled Federal Government Printing and Publishing: Policy Issues. And that, in turn, paved the way for the Paperwork Reduction Act of 1980. Its stated purpose is to achieve coordinated and integrated federal government information policies and practices. Overall direction was set up in the Office of Management and Budget (OMB).

Some of us were concerned that OMB would become the nation's information Czar. They were charged with "the development and implementation of federal information policies, principles, standards, and guidelines, including review and approval of information collection requests, the reduction of paperwork burden placed on the public, federal statistical activities, records management

activities, privacy of records pertaining to individuals, interagency sharing of information, and acquisition and use of automatic data processing and other technology for managing information resources." The siren song that sold Congress and people in general was paperwork reduction and the appealing promise of eliminating government redtape.

In the past five years, postal rates have risen alarmingly, especially for the fourth class library rate which is used by libraries for interlibrary loan service to provide users access to resources beyond their own collections. Rates went up three times in 1981, alone, settling at 33¢ for a two pound package by the end of that year. But as of January 1, 1986, it jumped from 54¢ to 67¢ -- a 103 percent increase since 1981. And, if the Administration's FY 1987 budget proposal prevails in Congress, the same two pound package which cost 7¢ back in 1970 will shoot up to the commercial rate which currently is 94¢. This would mean another 100 percent increase since 1984. Nonprofit libraries having no one to pass these costs on to must either win budget increases or curtail buying books and other library resources in favor of postage stamps.

When it comes to the nonprofit bulk mail which gets the lion's share of the postal revenue forgone subsidy appropriated by Congress, the story is equally grim. The churches and charitable organizations, which solicit funds to help maintain the President's "safety net" for needy people, will be equally hard pressed to continue their mailings.

In 1983, when deregulation was sweeping the country, the divestiture of AT&T brought with it another incursion into the library budget -- an AT&T proposal to hike the dedicated-line rate used by libraries for the transmission of bibliographic data by an average of 73 percent. The CAPCON network in the District of Columbia, however, was slated to rocket up 108 percent. After developing a coalition of the nation's library networks with the Association of

Research Libraries, ALA, working with Senator Larry Pressler (R-SD) of the Senate Commerce Committee, was able to fend off that AT&T proposal before the Federal Communications Commission (FCC). Instead, the libraries' rates went up an average of about 27 percent. Still too steep when you consider some bills were already $3,000 a month.

In the midst of trying to overcome the erosion of increasing library costs and taxpayer rebellions, like California's Proposition 13, there was a trend toward user fees, especially for nontraditional services, such as online database searching. And, from time to time, there have also been temporary charges assessed to nonresident library users who have withdrawn their tax support.

The monstrous $200 billion budget deficit, which had more than doubled since passage of the 1981 tax law with its $750 billion drain off of revenues over a three year period, led last Fall to the Gramm-Rudman-Hollings Amendment to the Debt Ceiling bill. This measure, to reduce the federal deficit to zero by 1991, has been called "an act of desperation" by House Majority leader Jim Wright (D-TX). It is also viewed by many of us as an abdication of Congress' constitutional "power of the purse." In any case, its first bite is being felt with a 4.3 percent across-the-board cut in library and other domestic federal programs. Nationwide state and local governments face the prospect of losing some $10 billion. This was detailed in the January 15 Federal Register in the sequestration report of OMB and the Congressional Budget Office (CBO), as called for in the G-R-H Amendment (the Balanced Budget and Emergency Deficit Control Act of 1985) PL 99-177.

The next installment in the annual budget process showed up February 5, in the Administration's budget proposals for FY 1987. There for the fifth consecutive time, the library grant programs under the Library Services and

Construction Act and Title II of the Higher Education Act are recommended for elimination. In addition, they have proposed a rescission of $33 million appropriated in FY 1986 for public library construction, library literacy programs, as well as for the HEA II training, r&d, and research library funds.

The trend towards "privatization" (the selling of public property into private hands) combined with the ongoing move to "contract-out" federal libraries as commercial services, covered by OMB Circular A-76 is a kind of one-two punch, as I see it. It will further erode the quality of library service and access to it not only by citizens seeking federal information developed and gathered at taxpayer expense, but also by other governmental agencies at the federal, state, and local levels. So much for the much-touted federalism.

Incidently, the FY '87 budget also proposes to rescind the final quarter payment of general revenue sharing funds for FY 1986. There goes another vestage of the federal partnership down the drain.

In the same FY '87 budget, as you probably know, the President is seeking an 8 percent increase in defense spending. As many of you may recall, in recent years, the money for academic research funded by the National Science Foundation has dwindled to a mere trickle. Anyone interested in federally funded research these days better resign themselves to the Department of Defense (DOD) as their source. And with DOD dollars, you are likely to get a national security blanket wrapping your project as top secret.

This sense of Big Brother growing more powerful in our democratic society is heightened by the increasing number of news stories about the President signing a secret directive on November 1 (NSDD *196), requiring thousands of

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*National Security Decision Directive

Administration officials to submit to polygraph tests as part of a counter espionage crackdown throughout government.

Since NSDD is classified, it is not known if it contains a prepublication review system for speeches and writings of current and former government employees. However, according to a June 1984 Government Accounting Office (GAO) report every employee with access to "sensitive" compartmental information (SCI) is being required to sign a lifelong prepublication censorship agreement (Form 4193). Since the issuance of Form 4193 in 1981, approximately 156,000 military and civilian employees have been required to sign such agreements at the Department of Defense alone. The GAO reports that employees in 22 other federal agencies have also signed these agreements.

Finally, I must call your attention to OMB's issuance December 12 of Circular A-130, Management of Federal Information Resources. This 21-page circular is must reading for anyone monitoring the continuing pattern of the federal government to restrict government publications and information dissemination activities. We should all pay careful attention to its implementation.

In a December 23 Washington Post editorial, "Privatizing the Numbers," they said that the circular "would likely reduce the number of printed government publications available in libraries or at low cost and increase the already widespread practice of private outfits interfacing with government computers and providing printouts for users at hefty fees."

Circular A-130, which first appeared in draft form for comment in the March 15, 1985 Federal Register, although somewhat improved now, still requires cost-benefit analysis of government information activities, "maximum feasible reliance on the private sector" for the dissemination of government information products and services, and cost recovery through user charges where appropriate.

The likely outcome is an acceleration of the current trend to commercialize and privatize government information.

In closing, I ask you -- Are we going to weigh the cost of information access on the marketplace scales of the Office of Management and Budget or on the scales of justice and equality? What price tag can we put on an informed electorate and democracy?

ISSUES IN THE MANAGEMENT AND DISSEMINATION OF FEDERAL INFORMATION

Kenneth B. Allen
Vice President, Government Relations
Information Industry Association

Introduction

It is a pleasure to be here today. My staff has suggested that it is somewhat of a waste to send a non-skier -- such as myself -- to Salt Lake City in February. Nevertheless, although I will not be taking advantage of the local ski slopes, which I understand are great, I have come because the issues on today's agenda are critical ones that affect all of us -- as citizens, as librarians, as academicians, and as private sector companies.

My remarks may be somewhat more dull than those you have already heard. I do not intend to call for either impeachment or a tax increase. Instead, I would like to return to today's agenda - the management of federal information. As we discuss this issue, it is my hope that we will discover a commonality of interests that will permit us to work together to preserve the information channels of this nation.

Before I address current federal information policy, one point should be emphasized. The program for today's symposium indicates that I was formerly with the U.S. Office of Management and Budget. There is nothing wrong with that; I spent over nine years at OMB. Moreover, I am proud of my years with the government and believe I made substantial contributions to public service. However, I am no longer with the government. Accordingly, it should be made absolutely clear that I cannot and will not speak for current Administration policy on these or any other matters. Apart from the fact that it would be wrong to do so, it would also be misleading. I am no more privy to the

government's deliberations and decisionmaking processes than the rest of you in this room.

Today, I represent the Information Industry Association. We are a broad-based trade association representing over 450 companies interested in business opportunities associated with the creation, dissemination and use of information. I should note that only a relatively small percentage of our members are involved in the dissemination of products and services based upon government information. Most of the companies I represent provide information products and services which have nothing to do with government information. If I were to do a survey of my members, it is likely that the issues we are here to discuss would not receive a high priority from a business perspective. On the other hand, all of my members are also citizens. From that perspective, all 450 companies who belong to the Association are vitally interested in these matters. With that disclaimer, I would like to turn to the issues before us.

Trends in Government Information Management

The underlying assumption of today's program is that a number of significant trends are emerging regarding the availability and management of information held by the Federal government. I believe that assumption is correct. Is the federal government collecting and creating less information today? The answer is yes. Is more and more government information being put into electronic media? The answer is yes. Is greater attention being paid to the economic value of information? The answer is yes. And finally, are greater restrictions, such as those associated with national security controls, being placed on the availability of government information? The answer is also yes.

In addition to understanding what is happening, it is also important to understand why. One of the things I learned many years ago as an intercollegiate debater was that it is impossible to have an intelligent and

informed debate unless there is some agreement as to basic definitions and principles. The same holds true for public policy issues. If we do not have an accurate understanding of both what is occurring -- and why -- it will be difficult, if not impossible, to address these issues in a rational and useful manner.

We must, therefore, be careful in analyzing why the government is reducing the amount of information. It is all too easy to misinterpret the motives for these actions. An example comes to mind. On the plane to Salt Lake City, I was reading a travel guide about Utah and learned that the bricks used to construct the bank in Vernal, Utah, were delivered by parcel post. It seems that it was cheaper to send the bricks through the mail than it was to have them delivered through more traditional means. Eventually, of course, parcel post rates were raised to the point where this was no longer feasible. It is possible that some persons may see this increase in postal rates as a deliberate attempt to stifle the brick industry, or prevent the further expansion of Vernal. It is, of course, extremely unlikely that this was the case -- and to assert such a motive would be both inaccurate and misleading. The same holds true for federal information policy.

Are these trends part of a grand scheme or conspiracy on the part of some government officials to reduce the ability of citizens to access government information, as some observers have suggested? Without hesitation, I believe the answer is a resounding no. While it may disappoint some, the trends we are seeing in government information policy are the result of much more simple and straightforward motives. It is highly probable that there are a few isolated individuals in Washington who truly believe that the public has access to too much information. However, there is no central policy or organization in Washington dedicated to reducing the public's access to information. Rather,

the trends we are seeing can be traced to two factors. One is the general philosophy of the current Administration -- an Administration that was overwhelmingly elected -- to reduce and redefine the role of the federal government. The second factor is the attempt of public officials to find solutions to legitimate policy concerns, such as national security. To suggest any other motive, especially without evidence, is inappropriate and dangerous.

Paperwork Reduction Act of 1980

In discussing federal information policy, the place to start is the Paperwork Reduction Act of 1980, the father of OMB Circular A-130, since that is frequently referred to as the root of all evil. Despite assertions to the contrary, the sole objective of the Paperwork Reduction Act was and is to improve the management of government resources, and, in particular, to address two specific problems. The first problem was that the government was collecting too much information from the public. The second problem was that federal agencies were not managing their computer resources very efficiently and effectively.

I am positive that each of you in this room has, on occasion, complained about the amount of government paperwork you receive. You are not alone. The Commission on Federal Paperwork clearly documented that citizens, librarians, businesses, local governments, and others were spending over one hundred billion hours annually providing information to the government. I am sure that Mayor Wilson could attest to the time and effort spent by his administration to provide information requested by the federal government. The Commission also documented that much of this information was unnecessary or duplicative of information already held by the government. Unlike other government programs and activities, there was no check and balance system to ensure that agencies were only collecting information that was truly needed. Almost any government

employee could create a new form and send it to the public. Frequently, it seemed that almost every government employee was doing so.

As a citizen you may feel that such paperwork is a pain to comply with. However, it is much more than that. Stop to think about the time your organizations and local governments spend to provide such information to the federal government. You will quickly see that it is more than a pain: it becomes a costly burden. Your tax dollars are being spent to pay federal employees who create the forms and to pay state and local employees who must provide the information. Somehow this doesn't seem very efficient, especially if the information isn't used. Certainly, we in the private sector think so. Every dollar a company spends to collect information for the government, and it can be a substantial amount, increases the cost to the consumer and diverts resources that would be better spent on more efficient activities.

The second problem addressed by the Paperwork Reduction Act was that the government doesn't use computers very effectively. I am sure that most of you have read stories about government computer systems that didn't quite work. Who can forget last year's problems at the Internal Revenue Service. There may still be some people waiting for their refunds. Closer to home, you may remember the NORAD system in Colorado which erroneously signaled incoming enemy missiles because someone put the wrong tape on the computer. While not all government computer systems suffer from such afflictions, there are sufficient examples to cause concerns. I remember an Air Force logistics system on which $500 million was spent before it was cancelled. The point is that this is a serious problem which cannot be permitted to continue. The money spent on such systems is too substantial to be wasted, and the systems themselves directly affect the ability of the government to carry out its programs.

The solution to these problems was the Paperwork Reduction Act of 1980. This Act really does three things. One, it provides that no agency may collect information from the public without demonstrating to the Office of Managment and Budget that such information is necessary and does not duplicate other information held by the government. Second, it requires the OMB to establish consistent, government-wide policies to improve the management of federal information resources. Third, and perhaps most importantly, it recognizes in law the concept that information is a resource which has both cost and value.

I believe that most of us in this room would accept this concept. It is difficult today to continue to argue that information is a "free good" and mean that it has no cost. It is likely that you in the library community were aware of the cost of information long before many others in our society. The costs of establishing and maintaining your collections are all costs directly attributable to the collection, maintenance and distribution of information. The important point is that once you recognize that information has costs, you must also take the next step and manage those costs. Unless, of course, you have access to an endless supply of money.

The same is true of the government, which spends over $15 billion a year just to buy and manage computers. No one has ever been able to estimate the total cost of government information activities. But even the most conservative estimate suggests that it is a substantial portion of the federal government's budget. On the value side, information is important because it is a resource which feeds the decisionmaking process. Many public officials were concerned that, despite all the money spent on information activities, agencies weren't managing these activities very efficiently and, more importantly, weren't getting accurate and timely information. Decisionmakers never seemed to have the right information at the right time. All too frequently, the answer to a

problem was "let's do a study;" which, of course, means "let's collect more information from the public." Better management of these resources would hopefully result in better and more timely decisions.

Was the Paperwork Reduction Act needed? Yes. Has the Act been effective? Yes. Today, the government collects substantially less information than it did before the Act. In most instances, this is information that was not needed and probably never used. Certainly we could argue about the value of individual information collections. I do not intend to engage in such a debate because it ignores the more important issue: most of the information collections that have been disapproved involved information that was unnecessary and has never been missed.

Another point that has not been made is that OMB's review of agency information collections is not a secretive process. To the contrary, it is deliberately done in the open. Agencies must tell the public when they submit a request for approval to OMB; the public is requested to provide comments on the merits of that request; and the record of the decision, including OMB's rationale, are available for review in a public docket room. Public partcipation is a valued part of the process.

The Act has also fostered better management of agency computer systems. Agencies are beginning to focus on management issues such as better long-range planning and implementation of software controls; issues which are somewhat obscure to address today. Senior public officials are paying close attention to critical information technology systems. Due to the lead time associated with the introduction of new computer systems, these results will take a little longer to see.

The most important benefit of the Paperwork Reduction Act is that agencies are beginning to recognize that information resources management, also known as

IRM, is a legitimate management discipline. This isn't really a difficult concept. Basically, it means, that when you set out to collect or create information, you should have some idea as to how you intend to use it.

Two other points should be mentioned about the Paperwork Reduction Act. First, it provides OMB with no specific authority to review individual agency dissemination activities. OMB does not review, or get involved in, agency proposals to print and disseminate individual reports, studies, etc. Elsewhere in Title 44 of the United States Code, OMB is required to review and approve continuing periodicals issued by agencies. However, apart from this requirement, which has been in existence for many years, OMB does not otherwise get involved in specific dissemination activities of the federal government. Decisions about such activities are made solely and independently by agency officials. So think about that as you review the exhibit of cancelled and endangered publications in the next room. OMB may have been involved if the information for the publication is no longer collected. However, if the agency still collects the data, OMB had no part in the decision as to whether or not it would be published.

The second point to make about the Paperwork Reduction Act is that it was a bipartisan piece of legislation. The Congress overwhelmingly voted for it; a Democratic President supported it and signed it; and a Republican President has implemented it. Regardless of political persuasion, there was support for this Act. In fact, the only opposition to the Act came from a few selected federal agencies, such as the Internal Revenue Service and the Department of Defense. Their objections were based upon the recognition that they would have to begin justifying why they were collecting all that information and begin to manage their information resources more efficiently.

So what has the impact been? Less information is now being collected by government agencies. This means that less information is available. More information is being put into electronic media as agencies invest in information technology for the purpose of handling more information more efficiently. Finally, greater attention is being paid to information as a resource. Agencies are beginning to manage their information resources for the first time.

Federal Budget Crisis

There is a second major item on the Washington agenda which also has a direct -- and perhaps more significant -- impact on the issues we are addressing. In fact, I am somewhat surprised that I have gotten this far without mentioning it. That item is, of course, the federal deficit. To be absolutely blunt, our nation is facing a national crisis. The annual budget deficit is over $220 billion and growing. As the President said on Tuesday, the budget process is not working. Gramm-Rudman-Hollings is evidence of that. Unable to reach agreement on where to trim the federal budget, the Congress and the President have put in place a process that will require drastic, across-the-board, reductions in federal programs. All activities of the government, including information programs, will be affected if this legislation is triggered. If this happens, programs will be reduced without regard to the impact on the delivery of public services; it will not be a rational process. As we address the issues on today's agenda, we have to face this problem head-on; as painful as that may be.

Government Information

That is enough history. The real issue is where do we go from here? I see two steps. The first is to agree on the problem -- both the what and the why. The second step is to begin developing workable and practical solutions. An earlier speaker referred to Paul Revere and his role in the American

Revolution. Paul did a great job of announcing the revolution and relatively little to win it. The alarm has been sounded. It is up to the citizen-soldiers -- that means us -- to take the next action.

Since we are discussing the availability of government information, I think the first step is to distinguish among the types of information held by the federal government. This is important because different approaches are required to provide the public with access to different types of information. The first category is information about the internal operations of government; information which is necessary if the citizenry is to understand how its government functions. This type of information would include memoranda, letters, decisionmaking documents, and other day-to-day by-products of public officialdom. The second category of information is that produced by the government in the course of carrying out its responsibilities. Such information might include survey results, studies, consultant reports and so on. In many instances, such information is collected or produced specifically for the purpose of making it available to the public.

Information Policy Principles

Once we have agreed on the types of information held by the government, we can begin to discuss the degree of public access to such information and the methods for providing such access. In doing so, I would like to emphasize that librarians are not the only ones who believe that citizens should have access to government information. We in the information industry also support that principle. In fact, I believe that we have more in common than is generally recognized. While we may disagree over some of the methods that should be employed to provide such access, we agree on the basic principle. In fact, I think we agree on a number of basic principles. These include:

Citizen access to information about the internal operations of government is critical to the proper functioning of a democracy. Government of the people cannot operate under the cloak of secrecy. The Freedom of Information Act should be retained and fees should not become a barrier to citizen access to information.

No person or organization should be able to exercise monopolistic control over the sources of information. This holds true for governments, members of the information industry, and even libraries.

A corollary principle is that the best way to ensure citizen access to accurate and timely information is through a diversity of information channels.

Certain information activities are inherently governmental and should be continued. Some types of basic information can only be collected and provided by the government. Contrary to what some may have implied about the position of the information industry, we do not believe the government should get out of the information business lock, stock and barrel.

Information censorship, and any government attempts to regulate the content of information, should be fought vigorously and continously. A democracy cannot function if citizens are denied the opportunity to acquire whatever information they want, about whatever subject they desire.

Finally, we believe that one of the major challenges is to increase citizen literacy. Today, this means much more than just the ability to read and write. While it is a disgrace that many in our society do not have these basic skills, the problem is even more complex today. We must ensure that citizens have the skills to use the new technologies and elicit the information they need from among the massive amounts of information now available.

Role of the Information Industry

I think it is important to emphasize that we in the information industry wholeheartedly support these principles -- and so, I hope, do the people in this room. For too long there has been a perception that the information industry and the library community are adversaries fighting for the hearts and minds of our citizens. This is not the case. It is my desire that I can dispel this notion and we can begin to work together to address some of the emerging issues that confront this nation.

Before I mention some of those issues, it would be inappropriate to leave this point without mentioning two other points. The first is that we do disagree on certain issues. For example, there are certain information activities of the federal government which we do not believe are appropriate governmental functions -- activities which the government cannot and should not be involved in. I am sure that we will continue to disagree about those in the future. However, I would hope that our difference of opinion would not stand in the way of our working together. The strength of our society is the ability to disagree and still respect one another's position.

The second point is that the information industry has made substantial contributions to our society. Apart from the economic growth which we have contributed, a healthy information industry strengthens the foundations of democracy by providing citizens, businesses and government with the information needed to make decisions about their personal and professional lives. I would like to thank an earlier speaker who complimented the Washington Post and the New York Times for their activities. They are charter members of the information industry. I would also like to note that the publisher who printed Donna's book is also a member of our industry. In fact, without the information industry, you would have been unable to discover Watergate or read Donna's

analysis of what is happening to federal information. Even if I may not agree with all of her arguments, it is important that we have an opportunity to hear them.

In the government arena, the information industry has provided many citizens with access to government information that they would not otherwise have had. In addition, the industry frequently provides such information in more useful formats than would otherwise exist. For example, before a private company invested its own resources, there was no index to Congressional documents and many of them were unavailable. In other arenas, information about patents and business operations is available to many more people than would otherwise be true if we had to rely solely on the federal government. The legal system has been substantially strengthened thanks to automated systems which provide lawyers with more efficient and effective access to information.

We also often provide a more accurate product. An interesting point is that when the Federal Register published OMB Circular No. A-130 there were 36 errors, some of them substantive, in the document. I understand that this is such a common occurrence that OMB now reviews all Federal Register products before ordering reprints. Would you accept the same level of quality from a private sector company? I doubt it.

A competitive marketplace stimulates a level of investment in the production of new information that government can never match. More importantly, that marketplace ensures a diversity of information sources essential to preserving our freedoms. Without such an industry, citizens would be totally dependent upon the government for information. From what I have observed of nations where that is the case, I, personally, do not find this an acceptable alternative.

Emerging Issues

With that, let me briefly mention some of the major issues that will affect the ability of citizens to acquire the information they need.

First, there is the current budget crisis. It is likely that many valuable federal information sources may fall victim to the fiscal crisis. While we may disagree over the methods for making such information available, we all lose if the information no longer exists.

A second issue is the move from paper-bound media to electronic media. More and more federal agencies are embarking upon what are called "electronic filing" programs where they will collect information from the public in automated form. A number of significant public policy questions are emerging from these activities that both you and we need to address.

The third issue is the inability of existing legislation to keep pace with rapidly evolving information technologies. All of us in this room are in the information business, either as users or providers; in some cases, we are both. It is in our interest to take advantage of the new technologies to acquire and manage information more efficiently. Unfortunately, current law does not always protect personal privacy or provide for copyright protection of products and services based upon these technologies. Unless we can resolve these problems, we may be unable to take full advantage of the benefits offered.

A fourth issue is in the national security arena. Although I have not discussed this, there are some serious efforts emerging to place greater controls on the availability of information. While protection of national security is certainly a legitimate concern, we must tread carefully in this area. If we permit the pendulum to swing too far, there is a great danger that we may find ourselves in the position of destroying a free society in order to preserve it.

The fifth issue is one you may be less familiar with. That is the liability of information providers. Traditional media sources in our society have received certain protections from libel and other damages on the grounds that they provide citizens with the information needed to enhance the functioning of democracy. As new technologies have emerged, information that we, as citizens, would have acquired from these media are now available from new sources. Unfortunately, a recent Supreme Court decision has determined that these new information providers are not entitled to the same protections as traditional media. Should this decision be permitted to stand, it may seriously impede the willingness of the industry to provide new information products and services and thereby impede the ability of citizens to acquire information. The full implications of this decision are not yet known. It may even extend to libraries. Consider, for example, the research librarian who recommends a book to a patron which is inaccurate and results in injury to the patron. A clever lawyer might argue that the librarian is liable for the injury.

The sixth and final issue is one I have already mentioned -- literacy. This is a long-term, continuing problem that we must address. We cannot afford to disenfranchise major segments of our society.

In my remarks I have gone somewhat beyond the sphere of government information issues. However, I believe that these other issues are important enough that we should begin discussing them. More importantly, I have tried to show that we in the industry, and you in the library community, have a great deal in common. I hope that we can move forward from today and work together on a partnership to preserve the information channels of our nation.

Thank you.

INFORMATION, PLEASE!
THE HUMAN COSTS OF THE INFORMATION SHORTAGE

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Information, like water, is a basic resource that is used daily by millions of people in a enormous variety of ways. Federal government information is of special importance. There would be no federal budget without the steady collection of information. Any economic or social problem that requires government action is bound up with information. The current efforts to uncover the cause of the recent tragedy aboard the shuttle Challenger involve collecting as much information as possible and analyzing it from many different angles.

The indirect value derived from federal information programs is equally important. Indeed, it is difficult to name a single area of national life that does not depend on the federal government to supply information. Education, medicine, science, agriculture, transportation and the prison system all rely on government information, but the largest user of federal information apart from the government itself is the private sector.

Information also is the foundation of our political system. The notion that the public should have access to information and ideas in order to participate is an ideal that has grown along with the nation. Today it is our best protection against the totalitarian tendencies of the modern bureaucratic state.

Unfortunately, we cannot now take for granted that the information needed will be accessible to us or that is is being used to positive social effect. The federal government has moved to limit and, in some cases, to eliminate information activities of widespread significance. Such actions have been justified under the banners of paperwork reduction, eliminating waste,

deregulation and -- vaguest of all -- the "national security." These complicated policies merit much public discussion yet, typically, such opaque phrases as "paperwork reduction" deter public scrutiny.

Government information policy is no doubt a complicated and rather mysterious affair. The Sherlock who seeks to understand its objectives, consequences and the relevant social and economic costs has many factors to examine. This paper supplies "leads" that point to some of the often forgotten consequences of the present Administration's approach to information.

REGULATORY AGENCIES

Information activities are an integral part of the overall operations of most regulatory agencies. Included in these activities are research, public outreach, publications and record of relevant facts that is part of any regulatory proceeding.

EPA

The Environmental Protection Agency is bound by numerous federal laws that require it to conduct research and investigations and to issue regulations at specific times. Despite this, EPA has withheld health and safety studies on proposed hazardous products and, under Reagan, has allowed companies to classify much of their data as confidential trade secrets.

At the end of 1985, a study commissioned by the Environmental Protection Agency showed that at least 6,928 accidents involving toxic chemicals had occurred in the last five years, killing more than 135 people and injuring nearly 1,500. This was considered only a partial list because data were drawn

only from selected areas of the county. Had the entire country been surveyed, the number of accidents might have been two to three times higher, according to Industrial Economics, Inc., the company that did the report.

(Note that the annual monitoring report EPA is required to prepare was contracted out to a private firm which was paid to develop knowledge in an area where the EPA itself appears to be seriously deficient.)

Each day more and more communities discover that they are living near dumps or on top of ground that has been contaminated by dioxin and other deadly poisons. Today as many as 370,000 waste sites may require corrective action, yet, so far the EPA has put only 850 on its priority list and, during the last five years, has managed to clean up only six sites.

EPA's negligence in this area goes back several years and is directly linked to its mismanagement of information. In 1982, Anne Gorsuch Burford became the first Cabinet-level official in history to be cited for contempt of Congress. This citation was based on Burford's refusal to comply with a subpoena covering documents the EPA had on 160 hazardous-waste sites given priority under emergency legislation passed in 1980. A fierce ten-month battle over this information took place, uncovering related information that the agency had colluded with companies dumping hazardous wastes to avoid meeting statutory deadlines.

Three years later, the agency continues to drag its heels in a number of areas. Drastic cuts in research, deliberately caused by severe budget economies imposed in the early years of the Reagan Administration, hamper progress on clean air, pesticides, toxic waste and other substances.

Between 1980 and 1984, EPA's research budgets experienced the following reductions:

	1980	1984
Research on Air Quality	$85 million	59
Research on Water Quality	84	24
Research on Toxic Substances	38	23

During this period, it produced only six new publications in contrast to the 30 consumer publications made available during the Carter Administration. Public outreach also diminished as reflected in the reduction of the staff of the Public Affairs Office from some 70 to 80 under Carter to 30 today.

FDA

Another agency, the Food and Drug Administration, has inadequately monitored the use of toxic drugs and nutrition supplements in raising livestock, according to a congressional report released in January, 1986. These substances, many of which have been identified as causing cancer and other illnesses, were found in beef, pork, poultry, eggs and milk. Officials at the FDA admitted that it has identified and inventoried only 7 percent of the thousands of animal drugs on the market, a direct violation of a 14 year-old law.

The report on FDA was only one example of many in which FDA's and other agencies' performances have been judged seriously deficient. Frequently, an agency's failure to implement regulations has been associated with its failure to collect information or to act upon information in its possession. Perhaps the most publicized example was the year-long refusal of former Secretary of the

Interior James Watt to share documents about the attempt by Canadian firms to illegally acquire U.S. energy companies.

Ironically, several agencies have used a purported lack of information as an excuse not to take action, even when human life is involved. Just two weeks ago, EPA announced that it would not limit the use of a chemical named daminozide which had been shown by several studies to present a high risk of cancer. About 825,000 pounds of this chemical are used each year, mostly on apples, and in making apple juice, apple-sauce and baby food made with apples. According to EPA, the agency had two reasons for this decision: first, that the available studies were too flawed to tell whether there was a serious cancer risk and, second, the total national exposure to the chemical was much lower than it had originally estimated.

It is possible, of course, to prevent information that might result in regulations from reaching the government. In 1983, Congress examined the FCC's elimination of guidelines that encouraged radio and television stations to provide non-entertainment programs. It requested information about what types of program stations around the country tended to show. Though this information was supposed to be included in stations' license renewal applications, the FCC denied that it had the requested information.

Another example of this involves worker health and safety. In the early 1980's, the Occupational Safety and Health Administration announced that it would start making safety inspections only for companies whose occupational injuries exceeded the national average. By law, companies must keep logs of all injuries. OSHA's announcement created an incentive for companies to neglect to keep complete records, thereby giving a false impression of workplace safety.

STATISTICS

An important function of the federal government is the collection and analysis of statistics. Americans live in a quantitative society. We use numbers to chart literacy rates, unemployment, poverty and economic deficits. Due to budget cuts and the notion "if business can do it, we shouldn't," the government has significantly reduced its own statistical programs. This is an area where the private sector has been at least as concerned as public groups and institutions.

Statistical series can be weakened in several ways short of elimination. These include reductions in sample size, in the frequency of data collection and staff reductions. In the 1980's, all of these have handicapped the generation of statistics needed by business, social service agencies and local government. The medical community is among those that have suffered the most hardship. The National Health and Nutrition Examination Survey, which had come out every five years, is now coming out every ten years. The National Nursing Home Survey that was done every third year has been changed to one every six years.

An official from the Connecticut Department of Health Services testified before Congress in 1982 that state policymakers and health workers were opposed to such cuts, particularly at a time when their contributions from the federal government were being reduced and the need for well-directed spending was acute. State officials, she said, need federal statistics in order to set program priorities and to measure the success of their efforts alongside those of other states.

Contrary to assisting the states, it can be argued that the federal government has played tricks with statistics in order to increase the local burden. For instance, during the winter of 1984, the Department of Housing and

Urban Development did a study designed to reduce concerns about the homeless. Several studies had placed the total number of such people at around two million. The HUD findings, published as the Report to the Secretary on the Homeless and Emergency Shelters, said that probably no more than a quarter of a million Americans were homeless on a given winter night. The report immediately provoked charges of fraud and deception. Those working on the problem viewed the report as an effort to ease pressure for federal relief and to justify the Administration's policy, which regarded these people as a problem for state and local, but not the federal government. Their effort to refute the study's findings was made more difficult by its not being released for many weeks; it also has not been sent to the depository libraries.

There is not space here to go further into the subject of the manipulation of statistics. The main point to be made is that just as deregulation has been targeted for certain areas and not others -- toxic chemical companies but not the military -- so, too, have statistical programs been used, on occasion, to achieve a desired political impact. The long term implications of cutbacks and manipulations regarding federal statistical programs indicate the need for wide public understanding of how statistics generated by the federal government may be used to compel public acceptance of reductions in government services, deregulation and even controversial foreign policy.

The main issues in this regard concern the federal government's responsibility to provide statistical information, ways that statistical programs further or inhibit social programs and whether certain categories of statistical information should be treated as public goods or as private commodities.

SCIENCE AND THE MILITARY

Government attempts to limit the free flow of ideas and information have extended to many areas of the scientific and academic communities.

In the fall of 1985, it became known that a professor at Harvard University had signed a contract with the CIA that required him to submit his research to the agency prior to publication. This is only one of many such contracts that have been signed by academics and scientists across the nation during the last several years. In addition, federal agencies have, on numerous occasions, prohibited unclassified research from being shared at professional conferences, as happened in April, 1985, at a meeting of 500 photo-optic engineers. In addition to the cancellation of some papers, Defense Department officials also required people to prove that they were associated with government programs and to certify that they would not export the information presented.

Nor is this an isolated instance. In recent years, federal agencies have taken a number of steps to try to control audiences for papers presented to such organizations as the American Vacuum Society, the American Institute of Aeronautics and the Institute of Electrical and Electronic Engineers.

Such restrictions would seem more appropriate within the intelligence communitiy and at times of war. Traditionally, policies that promote the free and open sharing of information have been considered the best way to promote advances in science and to encourage invention.

Broad secrecy regulation has also been imposed on federal employees and federal contractors. It is estimated that approximately 200,000 federal workers from the departments of Energy, Treasury and Justice have signed nondisclosure agreements, in addition to thousands of government contractors and people doing federally-funded research. Moreover, regulations and laws have been enacted

that limit the public's ability to monitor such restrictions. The Defense Authorization Act of 1984 limits release of technical information under the Freedom of Information Act that might have military or space uses. Other rules limit access to unclassified information by creating special categories of "controlled" information.

Government actions that put information off limits may serve to shield it from public scrutiny. Official secrecy has become a major issue in relation to the early stages of research for the Strategic Defense Initiative, or Star Wars program. Senator Charles Mathias has publicly stated: "The latest reports that have trickled out of the x-ray laser program suggest that efforts to promote S.D.I. have gone beyond exaggerating the significance of the results to actually disguising the results." He went on to say that scientists who question the significance of the results in public are afraid they will be accused of compromising national secrets. In November, Secretary of Defense Caspar Weinberger signed a directive that makes the unauthorized disclosure of certain technical information punishable by imprisonment and a fine of up to $1 million.

The possibility of the public being kept in the dark about "Star Wars" is serious enough to have caused members of Congress to order an investigation of existing gag rules and the way that experimental tests are being recorded.

CONCLUSION

Growing numbers of people have grown concerned about the lack of information about a range of government programs. And none too soon. As the examples provided here suggest, there are critical problems of human health and safety being prolonged and aggravated by the government's refusal to collect and act upon information. Efforts to understand the significance of major changes in

the government's handling of information should include close attention to particular elements of deregulation, contracting out of agency information programs, cutbacks in federal statistical series and the imposition of nondisclosure requirements. In addition, it is time to address the paramount issue of the accountability of public officials. By attending to these issues, people are more likely to find effective ways of responding to government information programs affecting their lives and reclaim the fundamental American commitment to the open, informed society.

LEGAL/CONSTITUTIONAL ASPECTS OF CHANGING PATTERNS OF ACCESS

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After listening to the previous speakers, you should need no convincing that this symposium's topic of access to federal government information is a complex and multi-faceted one. Indeed, simply defining what we mean by the term federal government information is a difficult task in view of the many different forms of information that have been discussed today.

In addition to the kaleidoscope of federal government information, there is an enormous variety of ways that this information is collected and disseminated, or, in keeping with a theme of this gathering, prevented from being collected or disseminated.

Finally, the evidence is mounting that the public's access to federal government information is changing in many different ways, and that evidence suggests a recent pattern of more restricted access. Whether based on technological change, budgetary constraints, perceived national security concerns, or an administration that is insensitive to open government, we can paraphrase the famous 1980 campaign question and ask, "Can we know as much about our federal government today as we could four years ago?" The fact we even have to ask the question is disturbing.

To illustrate these three points, that is, first, defining federal government information is difficult because of the many forms it takes; second, there is a great variety of ways information is collected and disseminated; and third, that the Administration seems to be taking steps to restrict access to government information, consider some examples from the past few years:

-- Persistent attempts to limit the scope of the Freedom of Information Act.

-- Rewriting the classification system to assure that more rather than less information is classified.

-- Insistence on lie detector tests, the results of which would not be admissible in a court of law, for more than 100,000 government personnel.

-- Barring press coverage of the Grenada invasion.

-- Promiscuous use of executive privilege to prevent Congress and the public from learning of EPA wrongdoing during the Anne Gorsuch/Rita Lavelle years.

-- Efforts to shield the President from anything but carefully controlled and infrequent contacts with the press.

I could go on, but my assignment is to discuss legal aspects of the changing pattern of access. The legal aspects are as complex and multi-faceted as the subject of access to government information itself. When I expressed my concerns to Maxine Haggerty about the magnitude of the task, we decided that a useful approach would be to sketch the legal landscape of access to federal government information, recognizing that comprehensiveness would be impossible and that discussion of legal minutiae would be undesirable.

Having a mandate to paint the legal picture with a broad stroke, I hasten to stress that even this more manageable approach will omit much that is important. What I hope to accomplish, however, is to give you some legal framework, or perspective if you will, to better understand an exceedingly complex subject.

I wish to proceed by discussing a hierarchy of law. First, I will begin with the Constitution, with emphasis on how First Amendment guarantees relate to this area. Second, I will discuss some of the major federal statutes touching upon government information. Third, I will talk about administrative law, because many developments discussed this morning concern agency or bureaucratic actions. Finally, I will comment on the limits of law in this area and suggest

that your participation in the political policymaking process is essential to safeguard and expand access to government information.

I begin with the Constitution, and I would like to draw a distinction between constitutional tradition and constitutional law. We have heard much discussion this morning about the importance of free access to government information in a democratic society. Although that has been an unrealized ideal in American history, it has nonetheless remained an ideal, a very important one, and in that sense has been part of our constitutional heritage.

By constitutional law, I refer to those specific rights or protections that would be enforced in a court of law as premised on our written constitution. As I will point out shortly, what courts will recognize as constitutional rights may not embody completely what I have called constitutional tradition in a broad historical sense.

The Constitution contains provisions relating to collection and dissemination of information, such as the requirement of a census every ten years, and the requirement for the President to give "Congress Information on the State of the Union," but the focus here is on the First Amendment, which provides that "Congress shall make no law ... abridging the freedom of speech or of the press."

The United States Supreme Court has interpreted the First Amendment to reject government prior restraint on speech or publication. The prior restraint doctrine, for example, was applied in the Pentagon Papers Case (New York Times v. United States, 403 U.S. 713 (1971) (per curiam), when the Supreme Court thwarted the Nixon Administration's effort to prevent The New York Times and The Washington Post from publishing purloined Department of Defense documents about the Vietnam War. It may have been permissible for the government to prosecute Daniel Ellsberg and Anthony Russo under the Espionage Act for stealing

the documents, as the Supreme Court suggested and the government later attempted, but, said the Court, the First Amendment prevents the government from obtaining an injunction against publication of the documents.

The prior restraint doctrine does not entitle you to obtain information from the government, but once you have that information, the government must overcome a virtually insurmountable burden to prevent you from speaking about it or publishing it.

How does this relate to access to government information? The Supreme Court may have diluted its nearly absolute ban on prior restraints in a case where the person wishing to disseminate information acquired it as a result of his government service. When he was a CIA agent, Frank Snepp agreed with the CIA to allow the agency to review any material he proposed to publish that would compromise classified information or sources. After he left the CIA, Snepp, without any prior CIA review, published a book criticizing United States practices during the Vietnam War.

The government sued Snepp for breach of his prepublication agreement. Even though all parties agreed "that Snepp's book divulged no classified intelligence," Snepp v. United States, 444 U.S. 507, 510 (1980) (per curiam), the Court approved a damage award to the government. The Court considered the prepublication agreement sufficient to overcome First Amendment concerns about prior restraint.

Critics of the Snepp decision warned that it could cut off a vital source of government information to the public by chilling government officials from expressing their views on public affairs. They would engage in self-censorship by omitting controversial material from their writings, or they would not write anything at all. The Reagan Administration has taken steps to fulfill that prophesy.

In 1983 the White House announced National Security Division Directive 84, a presidential order requiring over 120,000 government employees to sign lifetime prepublication agreements as a condition of access to certain categories of classified information. If they wish to publish anything containing any information related to intelligence, they must show it to the government for review and alterations, not only while in office but for the rest of their lives.

The effect of the directive: Those people most knowledgeable about subjects of overriding national concern will be least able to comment without approval of those they wish to criticize. It would clearly have an acute effect on the right of former officials to participate in public debate. The directive was suspended after congressional and public outcry, and it would have been subject to a constitutional test under the prior restraint doctrine in view of its dramatic scope and effect on free expression. Nonetheless, prepublication review agreements have been and continue to be required of many government employees. There is also a trend to include prepublication review clauses in government-sponsored university-based basic research contracts, a trend that touches not only on First Amendment guarantees against prior restraint but also the principle of academic freedom.

Apart from the question of First Amendment guarantees against prior restraint is the issue of whether the public has a constitutionally-based right of access to government information. After all, if it is our government, and if an informed citizenry is essential to its proper functioning as a constitutional democracy, shouldn't we have a constitutional right of access to government information?

The United States Supreme Court has resisted such a claim. It has held that in the context of a criminal trial the public has a First Amendment right of access to such a proceeding based on the historic openness of the criminal

process. (Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980). Some constitutional law experts have argued that the rationale of this decision should be extended to other government proceedings and forms of government information. Our own Federal District Judge David Winder extended the First Amendment right of access to administrative hearings regarding the Wilberg mine disaster in Utah. (Society of Professional Journalists v. Secretary of Labor, 11 Media L. Rptr. (BNA) 2475 (D. Utah 1985). However, the Supreme Court thus far has confined the First Amendment right of access to the limited arena of criminal trials.

The absence of any substantial constitutional right of access to government information is what made the Freedom of Information Act necessary. I am therefore stepping from the constitutional law area to federal statutory law.

It is a large and significant step for purposes of our discussion. The First Amendment is firmly fixed in our constitution, but statutes are different. What one Congress does, another can undo. Passions of the day rage and cool in Congress, as elsewhere. It is seductively easy to let go of legislated freedoms on the ground that they are too costly for a beleaguered twentieth century democracy. The costs of most significant "freedoms" in budgetary and human terms leave them vulnerable to shifts in political power and ideologies. Indeed, Chief Justice Earl Warren once suggested that the Bill of Rights would not be approved by today's electorate.

The Freedom of Information Act is a legislated freedom, a freedom of remarkably recent vintage. Enacted in 1966, strengthened in 1974 over President Ford's veto, it has solid roots in our constitutional history against closed, inaccessible power. It responded to concerns about a modern, complex government of unaccountable bureaucrats who, as Franklin D. Roosevelt said, work "with a passion for anonymity."

The FOIA's concept is simple but revolutionary. It grants a right to obtain government documents just for the asking. Any person for whatever reason may request an agency record, and the agency must disclose it unless the document falls within one of nine exemptions laid down in the law. If the agency refuses, the requester may go to court on a priority basis, and the agency has to convince the court that the documents are exempt under the law. Most important, the court decides the issue afresh, without deference to the agency's refusal. The exemptions to the Act embody a delicate balance of full disclosure against other values, even other freedoms, such as national security, trade secrets, and personal privacy.

For the press and the public, FOIA has become the Fourth Musketeer. Exposes facilitated by FOIA have revealed:

-- Approximately one-third of all small corporations regularly underpaid federal income taxes in the late 1960s.

-- Tests of drinking water near uranium mines in western New Mexico disclosed high levels of radioactivity and toxic wastes.

-- The Consumer Product Safety Commission files contained information from a number of major manufacturers about exploding television sets.

-- A Department of Energy study indicated plutonium workers might suffer from increased susceptibility to cancer.

-- And, as an example closer to home, the U.S. Public Health Service disclosed, in response to a FOIA request from Utah's governor, that Utah residents suffered an unusually high proportion of birth defects because of atomic bomb testing from 1950 to 1964.

FOIA also helped uncover information about:

-- The FBI's campaign to discredit and disgrace Martin Luther King, Jr.

-- The My Lai Massacre.

-- The CIA's administration of powerful hallucianogenic drugs to unknowing human "guinea pigs."

At least one hundred books and articles on major domestic and foreign crises have been written on the basis of FOIA disclosures. Topics have included:

-- histories of the Suez and Congo crises

-- U.S. policy during the Chinese Civil War in the 1940's

-- the Alger Hiss-Whitaker Chambers controversy

-- the Rosenberg trial and its aftermath

-- Vietnam

-- the Cuban missile crisis

-- the Bay of Pigs

-- the Kennedy assassinations

Of course, like all freedoms, FOIA has turned out to have its price, financially and otherwise, and some costs have proved to be more expensive than others. The Act has been used not only to gain insight into government but also to get an inside view on the operations of private businesses and the lives of private citizens. Four out of five requests come from businessmen and lawyers, in many instances seeking competitive information or to bypass litigation discovery process. The CIA and domestic intelligence agencies fear that national security information will be compromised in spite of exemptions, but hard data showing deleterious effects are scarce.

The last five years have seen efforts to restrict FOIA. The administration has proposed legislation to broaden certain exemptions, and proposals have been made to insulate agency discretion from court review. In spite of the many legislative proposals, only one has been enacted so far. In October 1984, President Reagan signed into law a bill that enlarges the exemption of CIA records from disclosure.

Assaults on FOIA have come not only on the legislative front. In 1977, Attorney General Griffin Bell ordered agencies to make available all information requested under FOIA unless disclosure would be "demonstrably harmful." In 1981, Attorney General William French Smith revoked that policy and stepped up resistance to disclosure. On another front, increased fees for FOIA requesters have put a prohibitive price on information. Moreover, agencies in this Administration seem to be taking a harder line at the first response stage to FOIA requests by denying or delaying access.

Time and space prevent detailed discussion of proposed FOIA amendments. No doubt there is room for improvement in FOIA, but I urge great skepticism of proposals to restrict access. A tension between claims of national security and open government, for example, is not unhealthy -- at least not until we have more reliable evidence that it is producing harm.

Passing a law like FOIA is only the beginning. If the law fails, a piece of our freedom is chipped away. Times change, and certain values, like open government, go out of fashion. FOIA, like all basic freedoms, sometimes hurts the worthy and helps the unworthy. It takes constant vigilance and commitment to make any law work. I hope we have all these qualities to keep FOIA around for a long time and to resist efforts to undermine it as an instrument of freedom.

I would like to spend more time on FOIA, but we must move on to another federal statute that has had an important impact on the availability of government information. The provisions of Title 44 of the United States Code that established the Federal Depository Library System are based on the national policy that government information should be recognized as a public good and should not be provided only to those most able to afford it or to those in close proximity to the government office or agency in possession of the information.

This group, I understand, is familiar with the Federal Depository Library program, and it must seem odd to you, as it is to me, that as technology transforms the government's collection and dissemination of information from a print to electronic data processing mode, the policy principles underlying the Federal Depository Library program are not more vigorously adhered to and implemented in this process, but they are not. As the previous speakers related about increasing commercialization and privatization of government information, quite clearly they are not.

The issues arising from the technological transformation of government information are difficult and complex, but the idea that such government information is a public good that should be reasonably available to all is a precept that has stood the test of time. The statutory formula creating the Federal Depository Library System should serve as a model starting point, not an afterthought, in bringing the benefits of new information technology to the government information area.

It has not been entirely an afterthought. The Joint Committee on Printing of the United States Congress has spearheaded the effort to determine whether government publications in electronic format can be part of the federal depository library program. The Joint Committee is pushing the idea of pilot projects to test electronic data bases in depository libraries. With the cooperation and support of the Administration, the goal is to bring the benefits of information technology to everyone and to avoid a society of information haves and have nots.

Another federal statute that has an impact in this area is the Copyright Act. The Act is based on the policy, written into the Constitution, of "promoting the progress of science and useful arts." The law grants to individual authors a limited monopoly right on the grounds that the public

benefits from the creative activities of authors and the copyright monopoly stimulates full realization of such creative activities.

Section 105 of the act provides that "[c]opyright protection ... is not available for any work of the United States Government." As a result, all official records and documents of the United States Government are in the public domain as far as copyright law is concerned, which is very significant from the standpoint of dissemination and availability of government information.

One area where the public interest in information touches upon this government exemption is the fact that many private businesses are in a position to take government information, which carries no copyright protection, and process it, digest it, index it, supplement, or otherwise enhance it in such a way that the private enterprise secures a copyright on the refined product. In law, for example, judicial opinions are not copyrightable, but the headnotes and summaries that the West Publishing Company publishes along with the opinions are protected by copyright.

I am not suggesting that private firms should not be entitled to protection for their creative additions or refinements of uncopyrighted government information. They perform a valuable service. The risk, however, is that the government, as the trends of commercialization and privatization continue, will increasingly limit itself to a more raw or unrefined product, leaving it to the private sector to enhance it. Once enhanced, the information will be more expensive to the public because of copyright protection, and access will be reduced.

A government information policy that takes seriously the notion that such information is a public good must remain sensitive to this phenomenon.

The youngest federal statute I wish to mention, and perhaps the one stimulating the most bureaucratic policymaking in this area, is the Paperwork

Reduction Act of 1980. The primary purpose of the Act was to rationalize and economize agency collection of information from the private sector. The Act authorizes review of federal government requests for information, the screening of request forms to lessen the paperwork burden, facilitation of inter-agency exchanges of information, and guidance by the Office of Management and Budget in information gathering, storage and disclosure. The Reagan Administration, in particular the OMB, has relied aggressively upon the Act to set policy on collection and disclosure of private information. More on this in a moment.

I said that I could not be comprehensive, and I haven't been. I have not mentioned the Government in Sunshine Act, the Privacy Act, and many others that have a material impact on the public's access to federal government information.

Those many other federal statutes that affect the public's access to information include those statutes authorizing the different agencies and departments of government to carry out their functions. Administrative action pursuant to legislative mandate takes us to the third category of law -- administrative law.

The bridge of this category is the Administrative Procedure Act, an all-purpose statue that prescribes how federal agencies are to proceed in formulating rules and taking actions to fulfill their legislated missions. The Act provides for judicial challenge of agency actions under certain circumstances.

When an agency takes action that affects the public's access to information, it can do so only if such action has been authorized by an Act of Congress. If the action involves formulation of rules and regulations, the agency must provide the public notice and an opportunity to be heard. Moreover, the agency action must not be arbitrary and capricious or an abuse of discretion. If the

agency fails to meet these basic requirements, the action may be challenged in federal court.

It is undisputed that for most bureaucratic action, the foregoing requirements are relatively easy to meet. This is due in large part to the fact that the Congress delegates a great deal of discretion to the executive branch. The result is a substantial amount of administrative law-making and policymaking. Indeed, the President is part of this law-making process in the form of Executive Orders.

One of the most profound exercises of this law-making power in recent years has been in the area of classified information. The classification system has long been criticized for its absurd over-inclusiveness. Even Attorney General Ed Meese has stated that our classification system is overbroad. Between 1945 and 1963 alone, more than 500 million pages of documents had been classified. By 1973, 160 million pages of classified World War II documents still had not been reviewed to determine if they should be made public. President Nixon once observed that even the White House menu was classified.

A 1978 executive order signed by President Carter attempted to limit the amount of information unnecessarily kept from the public. Government officials were ordered to consider the public's interest in information when classifying that information and were told to use the lowest level of clearance when in doubt. Classification of information was permitted only on the basis of "identifiable" potential damage to national security.

By an executive order signed on April 2, 1982 (Executive Order 12356), President Reagan reversed each of the critical components of the reforms adopted four years earlier. Government officials were no longer required even to consider the public's right to know when they classified information. When in doubt, government officials were to classify material at the highest, not

lowest, level of secrecy. The requirement that potential harm to national security be "identifiable" was abandoned. This was the first time since the Truman administration that action was taken to reduce rather than increase the amount of information available to the public.

The hottest area of agency action relating to government information is at OMB. Acting under the authority of the Paperwork Reduction Act of 1980 and, arguably, other statutes, OMB has issued policy circulars concerning the Management of Federal Information Resources. The most recent was Circular A-130, which OMB issued on December 12, 1985, and which sets forth policy guidelines to federal agencies regarding the collection, publication, and dissemination of information. It is a complex document and addresses a spectrum of information management issues. At one point the directive instructs agencies to rely on private sector dissemination of information products or services, a matter which touches upon the general questions of commercialization and privatization that have been aired at this conference. Implementation of this circular by particular agencies will result in agency action subject to the legal restrictions mentioned earlier, perhaps raising a host of administrative law questions subject to court review. More likely, however, is that agencies will have considerable room for discretion under the law but nonetheless must act in accordance with the directive.

The agencies are moving ahead with conversion to electronic information gathering and disclosure. In spite of broad delegations of authority by the Congress, at least one congressional committee has questioned whether the Security and Exchange Commission has the statutory authority to implement its proposed electronic collection and dissemination information system.

As much law as there might be that is relevant to this area -- be it constitutional, statutory, administrative, or otherwise -- and as important as

legal protections might be to public access to information, reliance on law to secure government information that we deem necessary to an informed citizenry is, in the end, misplaced.

Constitutional rights of free expression have not extended to substantial access rights. As I said earlier, what one Congress does, another can undo, and much legislation so broadly delegates authority to agencies that they operate with much leeway.

Trying to picture a legal landscape in this area is useful to understanding but does not give a prescription for action. The struggle for access to government information is, to be sure, fought in the courts, but ultimately it is decided at the ballot box, in the halls of Congress, and through strongly expressed citizen interest to political officials in both the legislative and executive branches.

Maxine Haggerty at one point told me that this is a consciousness raising event. I think that is an accurate description and reinforces my final point. It is forums such as these -- opportunities to gather and talk about these issues -- that should convince you and others that, in the final analysis, the public will get the government information it asks for. But the public must ask for it; indeed, the public must demand it. An informed citizenry may be necessary to a working democracy, but the citizenry must want to be informed. If the public demands to know more about its government through active participation in the political process, that government will respond. That is the task of citizens of a democracy, a task we should accept willingly and pursue aggressively.

QUESTIONS & ANSWERS

Answers to the following written questions were transcribed and edited from the taped proceedings.

QUESTION: How, with user fees and charges becoming common when we try to access information from the Government, can we prevent a class system from developing -- the information rich and the information poor?

ANSWER: (Ken Allen) Two points. One: I'm not sure I have a specific answer to that. I would suggest that they [user fees] are becoming more common than in the past, but they are not new. Look at history in terms of what has been imposed on government publications; there have been user fees almost since the beginning of the democracy. The attempt to impose user fees should not be perceived as a barrier to the availability of information. In most instances, I believe, [it] is truly an effort on the part of government officials to keep those products available. The alternative would be, if they had to totally finance [them] out of the treasury, that the products would just disappear.

In terms of how do we keep fees from being a barrier, our industry fully supports the library system, in particular the depository library system. We think they [depository libraries] need to be preserved with free access to information. They provide the appropriate vehicles for ensuring that, I think. I don't know twenty years from now, with the advent of technology, whether the libraries we know today will continue to exist in the same way. We need to start looking at that sort of issue. But, we in the industry very strongly believe that the depository library system should be supported.

On a personal level, I believe that librarians should not be dependent upon government agencies for what they get and don't get. Those of you who are citizens may not be aware that once or twice a year the depository libraries mark off the categories of information that they want, and they automatically have to take anything that falls in that category. I think libraries should have the opportunity to acquire information from whatever source they want. I personally believe that we should shift funding from the decision-making activities of the government into the libraries' hands, and would be willing to explore alternatives in that direction. It is one of those evolving issues that we need to be aware of and continue to address.

QUESTION: Please respond to a statement by Ken Allen, quote: "The best way to ensure public access is through a diversity of channels."

ANSWER: (J.D. Williams) It's too pat. As we now develop a proprietary interest in publications and groups of them begin to be diverted to private publishers, and there is a diminution in the flow of those same documents through the traditional depository system, we then are faced with the statistics that Val Florence has documented: the diminution of titles, numbers [of publications] that are available in a free system. That remark by our visitor [Ken Allen] was just another indication of my fundamental problem with the Reagan Administration, and that is, they love the market more than anything else. All you have to do is listen to Clarence Pendleton, of the United States Civil Rights Commission, and his condemnation of comparable pay for comparable worth. Don't mess around with what the market does, and has always done, to women's wages. You begin to get this Milton Friedman kind of adulation about the market. I think it has cropped up here today and is reflected in this question.

I have no problem with the right of publishers. Let's go back a few years to the Senate hearing of Senator Irving's Watergate committee. For Bantam -- or somebody -- to put together those hearings that cover two long shelves and do an editing job would provide you with a nice version. The thing that concerns me most was in the first part of my answer: the extent to which a market-oriented administration sees simply the property value involved in information; therefore, let us entrust it to the private sector with the result of diminished statistics, less available to people who simply cannot afford to buy the paperback.

QUESTION: Major letter-writing campaigns have been mounted in recent years, responding to proposed policies like the Information Management Circular. Federal analyses of these responses seem to devalue the responses from the library community, saying, "Oh, it was just a bunch of librarians." How can we make our actions most effective? Through our professional organizations, as suggested, or as individual citizens?

ANSWER: (Eileen Cooke) I think you need to do both. I don't think there is any one right way. You've got to learn to expect answers like that. I think that is typical of people when they are innundated with things. They will try to establish labels and say, "What do you expect? Those people have a vested interest."

I think what you need to do, too, is educate your library users, your users of information, because they often are seen as people who don't have an ax to grind. We will often try to bring in non-librarians -- mayors or civic leaders in the community -- to speak up in favor of libraries. That was one of the reasons why the White House Conference on Library Information Services was useful. You had a majority of non-librarians speaking up, getting educated at the same time, being brought up to date on the importance of information.

I'd like to give you a little homework, if you are going to start writing on these issues. In the January 27, 1986, Congressional Record, on pages S340-343, Senator Levin, along with Senator Duranberger and Senator Rudman (Gramm-Rudman-Hollings fame) have introduced a bill called, Rule-making Information Act, S.2023. There are statements made by each one of them on their views of how OMB is holding up the dissemination of information. Also, on how OMB says, "We are in a consultative position. We don't insist that our recommendations be carried out by the agency heads." As Levin said, it [OMB] acts as an iron hand, in one way, by letting administrators of the various agencies know that if they don't go along they may be out of a job; on the other hand, they turn to Congress or the public and say, "Well, they don't need to follow our advice." You'll find the pages in the Congressional Record very instructive, along with Circular A130.

I hope you'll do both. Write letters yourself. Don't be intimidated by what they say. Get non-librarians who are users of information. More important, get people from the business community. Ken is absolutely right. We [ALA] work with the publishers and information industry in many ways, but there are other areas where we disagree. There isn't anything personal about it. We need to hear all points of view. Then let the users and Congress decide.

QUESTION: Didn't President Reagan say he wanted to share Star Wars research? Why do you think he says one thing but does another?

ANSWER: (Donna Demac) President Reagan does impress me as a dreamer. The first time he talked about sharing Star Wars research he wanted to share it with the Russians. Remember that? He was going to build a weapons system that was so effective it would bring about the end of war. Now, this is an idealist or somebody who is pulling the wool over our eyes. I think, often, with his public statements he is a showman. He knows that the public will go for the big idea. I think what we need to do, however, is to look at what is being done and measure it against what President Reagan said.

QUESTION: Do you think there is any government information that is appropriate to keep secret? If yes, what?

ANSWER: (Ken Allen) Very definitely there is information that needs to be protected. For example, contingency plans in the event of national crisis. The military department has all sorts of plans on what to do, how to respond to various things, tactical battle plans, weapons research. I think it would be ludicrous for anybody to suggest that there is not information that should be protected. Certainly, the other side believes that we have information they want. If you read the paper you've noticed the number of spies that have been brought out of the woodwork over the past year. It is unfortunate, but in our society and world there are certain types of information that

have to be kept secret. To suggest otherwise would be misleading and a discredit to the nation.

The question, therefore, becomes, how do we define the boundaries of what should be kept secret. That's where, if we are to address that issue, we should not rant and rave at the government but provide solutions and recommendations and work with the government. I can assure you that the people who populate government agencies are like you and I. They're trying to do what they believe is in the best interest of the nation in the best way they know how. But they're not omnipotent, and they don't have all the answers. They are willing, in almost every instance that I have known, to open up their minds and work with new ideas and new approaches. Let's work with them to find the proper balance. That responsibility falls on all of our shoulders.

(Donna Demac) I agree with most of what has been said, but a couple of things remain unsaid. One is that there is a battle going on in this Administration on this issue. As mentioned before, it is really quite serious. It pertains to military information and to scientific information. There are those who want to disclose first and examine later. So, studies have been done; high-level commissions, including people from the National Security Agency, the CIA, the FBI, the American Association for the Advandement of Science, and other agencies got together three years ago to examine some of these questions. They came up with criteria, including whether this information is likely to be useful to the Russians right now; whether they are likely to get if from somewhere else; whether the information is available through commercial channels; whether we are focused in the right direction as we are trying to implement secrecy restrictions. So the problem right now is, the government has criteria, but it has gotten to a certain point and can't go further because of this contest taking place with its own ranks. I don't think anybody would deny that there has always been secrecy and a need for a certain amount of secrecy. The question is whether they are going to be able to set limits that don't interfere with other precious public freedoms.

(Eileen Cooke) I also agree very much with what has been said, but I think one of the things that disturbs me, and many people I talk to, is that so much is labeled classified that it begins to pall. You begin to think, does this all really have to be classified? Then, think of all the cost overrun horrors we've heard about and the expenses that have been exposed recently out of the Department of Defense. Most recently, Jack Anderson had a column on the Stealth Bomber, saying that no one really knows if it is going to work, and yet it is costing five million dollars per plane. And they've ordered a couple of hundred. But whatever the number, the plane is really unstable in the way it is designed, but it is classified. It's secret. At what expense must we go before we learn the truth?

It is a tough question to answer. I'd like to think that Congress has the oversight and is looking at these situations, but we hear so many of these stories. That is what disturbs most of us. What the answer is takes a Solomon-like decision. We don't have it in this room; we certainly need help in this area.

QUESTION: What kind of check system is in place to help avoid OMB censorship?

ANSWER: (Scott Matheson) I'd like to broaden this question, just slightly, because I think my answer will be more accurate that way. I would simply rephrase it to say, "What kind of check system is in place with respect to OMB actions regarding information management?" That is probably the pertinent question. The more narrow question is the one that my remarks this afternoon will focus on in greater detail.

The legal checks in place? Well, certainly, OMB is acting in this area, for the most part, pursuant to authority granted in the Paperwork Reduction Act of 1980. To the extent that the OMB takes actions consistent with the Act, certainly, there is a legal check on what the OMB is doing. I'm not suggesting that they have gone beyond their mandate through the Act, but in answer to the question, the Act does constitute one legal check. After all, it was the Congress, our popularly elected representatives, who gave this mandate to OMB. Even if their [OMB] activities are within the legislative mandate, the Paperwork Reduction Act, there are certain procedural requirements they have to meet to take certain actions. I'll be talking about those in greater detail this afternoon.

I think the most important check is not necessarily a legal check; it is a political one. The Congress has not been silent on the issue. In fact, I brought a copy of hearings that were held last summer entitled, <u>OMB's Proposed Restrictions on Information Gathering and Dissemination by Agencies</u>. Certainly, Congressional oversight in this area is critical. It's happening to some extent, perhaps not in the comprehensive and aggressive way that was implicit in J.D.'s suggestions this morning.

While I'm up here [at the lectern], I'm going to ask a question myself. What does everyone think of J.D.'s proposal to impeach the President? I'd like to say one thing about that. I moved back to Utah after living in Washington, D.C., for five years. I've discovered in the last few months that there are a lot of things around here that I really missed. I realized this morning that one of those things is the opportunity to hear J. D. give a speech. He's got to be one of the most enthusiastic speakers that I've ever heard. He is truly a treasure to this university and community. Another comment about his proposal. I remember well, thirteen years ago, that J. D. gave a similar speech in Salt Lake City, with respect to another President. I don't want to say that J. D. is prescient, but he made a similar proposal at that time.

With all that said, I'm not sure I can advocate the same proposal that J. D. has made today. Certainly, it is a provocative one. At the very least, I can agree -- and I'm sure that most of the panelists and most of you would agree -- that the information we're talking about today and the examples that have been given suggest that this is a very serious problem that demands more public attention than it is being given. If we can achieve a consensus on anything, with regard to J. D.'s call to action, we probably do need more of a focus on what is happening in the area of information management on the part of the United States Congress. I think that is probably our most effective check on OMB that we have. That is just a derivitive check. We aren't going to get the Congress moving without having J.D. make proposals such as he suggested today or without a consciousness-raising type of event such as this symposium.

I think the most important check on OMB -- and I think anyone would agree that any agency needs some outside check to make sure it doesn't go off the track -- will come through our political process. In this instance, from the oversight committees of Congress.

QUESTION: J. D., You sure woke us up this morning. You made us think. But, really, is there any chance of the House taking impeachment action against the President over access to information?

ANSWER: (J. D. Williams) My wife, one of Utah's leading children's authors, raced through the outline of this speech this morning, and she said, "J. D., please tone it down; the Legislature is in session." I have wrestled with that for about two weeks, because I care about this university, and I care deeply about its underfunding. Yet, when you see the prairie on fire.... I'm not going to be in the situation of that old business of, "If you hold a dime close enough to your eye, you can shut out the whole world." I meant everything that I said this morning in terms of the dangers of this Administration. Now, Ted asked me a question of predictability. Do I think that if we were able to start the kind of prairie fire that I asked for in the latter part of my address, in our professional organizations, could we catch the attention of Peter Rodino? In the next twenty-four hours, when I write him and send him a copy of the Karp article -- and I must now say that I am so sorry that I had not had a chance to look at your [Donna Demac's] book, because his article must have been heavily dependent upon it, correct? (Let's own up -- one, two, three -- about dependency, here.) When I send him a copy of that article, by itself, I surmise it will not have one chance of being looked at. But, I'm going to send it with a cover letter. (Now I'm speaking for someone who is not here to defend himself.) Ted, I'm going to send it with a cover letter of an old friend of his, and a [former] committee member, by the name of Wayne Owens. That, I think, will get his attention. If I succeeded in one of the three professional conferences that I'm going to, that I talked about -- and all of a sudden that started a few prairie fires in the south forty of the public terrain in this country -- I would surmise that we could get on his radar scope.

That would be a start. As I said to a gentleman about this during the coffee break, one of the deepest articles of my faith happens to be Henry David Thoreau's: "When a person has truth on his side, he is a majority of one already." I think we are.

QUESTION: Computerized information is fabulous for those of you who have computers or access to one. What about the rest of us? How can we access information only available on a computer?

ANSWER: (Ken Allen) That's a good question. And I seem to preface every question, when I come up here, with, "I'm not sure I have an answer." It is an issue that concerns my industry significantly, for two reasons. One, obviously, is the ability of citizens to access information generally. And to be quite parochial, from our point of view, as more and more of our companies are moving to online services -- for example, McGraw-Hill, for those of you who may have seen the New York Times and Fortune this week, is moving rapidly from traditional publishing to information systems. There's no marketplace. People can't buy it. There's no market for the information, and that concerns us. We think that we are going to see a system where the price of technology will drop to the point where it will be more widely available. Then, people will be acquiring it. One of the places they'll get it is in the libraries. I think there will be terminals available there. A lot of the systems will be made available to libraries. We have to go back to another issue. If twenty percent of the people can't even read and write, how many are going to be able to use computer terminals? So, as we take each of these steps, we can't lose sight of some of the basic, fundamental issues before us. I might mention, also, that we are vitally concerned about that issue, and a number of other issues that are emerging and need to be addressed.

I will give you a little advance notice. Next week, at Boca Raton, Florida, we are having one of our conferences. We will be announcing publicly that our industry association is undertaking a major initiative over the next nine months to anticipate the issues of the information society between now and the year 2000. We have retained a futurist company started by Alvin Toffler to identify some of the issues. We will be producing a report and various scenarios of what the world is going to look like in the year 2000, for citizens and the industry. We will be talking to people like Eileen and the ALA, government officials, the industry, and citizens. We hope that will stimulate further the debate on some of these issues. So you might keep an eye out for this.

QUESTION: How does one solve the paradox between the need to limit the federal government budget and the need to publish broad governmental information? Who should decide where the limited resources are spent?

ANSWER: (Eileen Cooke) That is a tough question. As I said earlier, we spent all last year trying to get appropriations for the bill [for grant programs under the Library Services and Construction Act and Title II of the Higher Education Act], and after winning about 130 million dollars for library programs, now we're faced with a proposal to rescind 33 million of that. So, it is, perhaps, visionary to talk about how you get adequate funding. I think, first we have to be realistic and get the deficit down. There isn't any two ways about getting the utopian access to information that we want. I'm sure any member of Congress or staff member that I go to saying that we need to get our library programs funded again will say, "Why?" Look at the competition. I think the argument, basically, for information is that it is part of the democratic process, and it ought to be given a very high priority. While I say that libraries are there, providing information, they still look at us with some skepticism and say, "Well, you have an ax to grind." But that's our principal argument, to say libraries need adequate funding at every level and to recognize that the federal government is not the principal funder; it is the local library. When President Reagan came into office he said that there wasn't a federal role for education, and certainly, down below that it came out that there isn't any federal role for library programs. We think there is; it is an investment in the future. We need to keep communicating with Congress and other members of our community, asking them to speak up. There isn't going to be any easy way to convince Congress that this has to have a high priority unless they can relate it to their own lives. We used to have a chairman of our legislation committee who would say, "You need statistics, all those global facts; but when you come right down to it, you have to give them a little 'for instance.'" You have to bring it down to their community, to their life situtation, whether you are talking about the price of a pack of cigarettes or bread and butter. You have to relate it. Often they joke in Congress that they will pass an appropriation for a billion dollars in the blink of an eye, and they will argue for hours over something that costs less than a million, because they all can understand that. My only answer is to say what Congressman Jim Wright said to a meeting of the education community last year. He said, "We've had a very fine breakfast. Now I have to deal with the hard realities here and tell you that we all have to pull together. First, you have to recognize there are two things that we really don't want to know about: how sausage is made and how our laws are made."

Aside from that, you still have to look for those human factors that make them understand that Congress, itself, needs access to information. With the Library of Congress facing an over 18 million dollar cut because of Gramm-Rudman and a previous reduction across the board on the floor, they're talking about having to lay off 300 people, close on Sundays, close every night of the week except Wednesday. Their hours are going to be 9 to 5 beginning the 9th of March. They are going to be looking at things they can do without. The biggest loss for the future and for researchers is going to be the cutting back on acquisition of materials they need. Materials

don't stay around long. One issue I didn't touch on, that still is very important to us, was initiated in the publishing community's Thor Power Tool Decision. I see you nodding your heads. It is very real. It has taught publishers that they really don't need to have great print runs; they can do short runs. If it is a Bestseller, they can print again. If it's a book in the arts and humanities area -- a book of poetry, a first novel by an author -- it may never get published if there isn't any guarantee that they are going to get a return on their dollar. But they are not going to keep those things in the inventory on their shelves, as they used to, because they are going to have to pay taxes on them. That was the Thor Power Tool Decision. There isn't any easy answer. We are going to have to keep plugging away and tell them it is important. It is a high priority.

QUESTION: The Supreme Court has not recognized the constitutional right to an education. Is there, then, a constitutional right to receive information? Or is that right simply an outgrowth of one particular era?

ANSWER: (Donna Demac) I could stand here and argue forcefully that there is a right to receive information under the First Amendment, or the opposite. There is a lack of case law on that subject. Most decisions deal with particulars of the public's need to know. For example, cases of prior restraint against newspapers; cases upholding FCC regulation of the Fairness Doctrine, requiring broadcasters to present opposing views of a controversial issue. So, it would be disingenuous of me to give you a "yes" or "no" answer on that topic. And it is because the field is wide open that, in dealing with the newer technologies, arguments are right now being developed that would argue both sides of the fence.

Question: Have there been any meetings between ALA and IIA, where you both lobby together on issues you agree on, such as literacy and the need to protect the flow of information to libraries and to the people?

ANSWER: (Eileen Cooke) To my recollection, there hasn't been any meeting just composed of ALA and IIA members; however, once a month, under the auspices of the National Commission on Libraries and Information Science, there is a gathering called the Public Affairs Round Table, where we have eight or nine people representing the Agricultural Library, the American Association of Publishers, IIA -- Ken has been there a few times, and other members of the staff have been there. We pool our information, all off the record. If there is anything said that seems to be of confidential nature, we say, "Remember, this is not for attribution; it is just for you to put into your pool of information." So, we do work together in many areas. But there are others where we don't. I remember attending a meeting in March of 1984, shortly after Congressman English put a statement in the March 14 Congressional Record, pages 814-16 (indelibly printed in my memory), having to do with electronic filing. One of the IIA

representatives was there, having marked up his copy of the Record on those pages. Tony Bearman, Executive Director of NCLIS [National Commission on Libraries and Information Service], said, "Oh, that was very helpful analysis you gave. Why don't we just make a copy of that?" And he said, "Oh, no." That's when we all decided that he was signaling strategy; he must be on the opposite side. But, we do share information in many ways. We haven't sat down and tried to solve the problems of the world; however, now that you're [IIA] going to have a plan for the future, I hope we will.

(Ken Allen) I just have to endorse what Eileen said. Washington is one of those strange towns. No new issues ever emerge, so it's not like we suddenly get together and say, here's a new issue; let's plan a strategy. It is a town of coalitions and meetings, where you go to a meeting and have coffee and ask who's interested in this and who's not. If you are interested, then you get together and have lunch and talk about it. You may say, "You write a letter to them, and we'll write a letter to them." That rarely becomes such a cohesive strategy that there is a formal battle plan. But we do communicate regularly. We do attend meetings. We meet frequently out here [in various areas of the country], which is even better, to talk to other people on panels. We've done that for a number of years. I think I even extended a complimentary invitation [to ALA] to our annual conference. We waived the fees. That's an important dialogue.

The other thing I mentioned in my speech. When I came on board to the IIA seven months ago, it quickly became appparent that on all sides -- the library community, the industry, and the government -- there was an adversarial relationship, like we were all competitors, battling one another. Since I've come on board, one of the things I've tried to do, in these forums and in others, is to say, "I don't think that is the most fruitful way to apply our resources. I think we have more in common that we realize. I think we should identify there. Where we do disagree, let us recognize and work on that. But, let's pool our points where we can work together." Having been at IIA for only seven months, there are still a lot of things I want to do. I would hope that Eileen and I will develop more formal contacts and more issues that we can work on together, so that when we do disagree, we will have at least something we can chat about that is positive.

QUESTION: The call for free access to information has produced deep concern, with allowing the government to know. There is a constant tension between our desire for privacy and our desire to know about others. In other words, [if you] prevent the government from knowing...you prevent inappropriate release.

ANSWER: (Donna Demac) I will respond to what I understand to be the direction of this statement. Perhaps the person who put it forward could clarify it. I think that one problem we face today is that government's capability to collect information about us has been

expanded enormously. On the one hand, that is considered positive because we have to have a streamlined federal government with up to date information systems and computerized capability. On the other hand, this raises many issues dealing with personal privacy and the ability of the federal government to intervene without our even knowing it. You are familiar with something called computer matching, which is the matching of data collections by different agencies. They are eliminating most restrictions on that activity. The danger there has always been the possibility of a centralized authority having so much information it would, no doubt, be tempted to abuse its authority. There's a question here of ability, of capacity in the information domain -- a flowing toward the government at the same time it is flowing away from most of us.

(Scott Matheson) I'd like to make a brief comment on that question because the Privacy Act is not one of the federal statutes I intended to address at any length this afternoon. Now that the question has come up, I would like to point out that we do have, as part of our federal statutory law, something called the Privacy Act of 1974. In fact, OMB has substantial responsibilities delegated to it in the implementation of the Act. The Act was passed in recognition of the phenomenon I was just talking about, that is, the substantial capacity of the government to collect information about our personal lives. The purpose of the legislation was to insure that the type of information the government does collect is not disclosed in a way that would threaten individual privacy and that individuals would have an opportunity to find out from the government the information it has about those individuals.

Now, there are all kinds of arguments about whether the privacy protections embodied in that legislation are sufficient or overbroad, but there is some federal statutory protection in this area. The Freedom of Information Act, which I will be talking about at some length today, has an exemption which allows an agency to whithhold information if disclosure of that information would cause a substantial invasion of privacy. Another exemption relates to business trade secrets. When you deal with the problems of privacy and access to information you are dealing with a very delicate balance, and Congress has attempted to strike that balance through provisions in the Privacy Act, the Freedom of Information Act, and in other areas. So, there are laws on the books that deal with this area. Not everybody agrees with the way they have been drafted, but that gives you some framework with what exists at the federal level.

QUESTION: Circular A-130 describes depository libraries as part of the safety net and urges agencies to make materials available to them, but the trend toward privatization places some collections in the private industry's hands before publication has occured. What steps will private publishers take to assure access to these materials at federal depository libraries?

ANSWER: (Ken Allen) I think that question is directed at the wrong person, in the sense that it shouldn't be directed to the private publisher but should be directed at the government. If a publication is provided to a private publisher without providing a mechanism for it to get to depository libraries, the flaw is in the federal agency that should write into the procurement a provision that copies be provided to depository libraries. Or, the agency, it seems to me, should undertake to purchase copies to provide for libraries. Some provision should be made. I think it would be unfair to place that burden on private publishers to absorb that. If the government says that depository libraries are a safety net, which we in the industry agree with, the government should carry out its responsibility to finance the production of those documents to the libraries. So, I would say the government should address those issues, not the publishers.

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KENNETH B. ALLEN

Kenneth B. Allen is Vice President for Government Relations of the Information Industry Association, operating out of Washington, D.C., and representing over 400 companies associated with the generation, distribution, and use of information. Prior to joining the IIA in 1985, Mr. Allen was senior staff member of the office within the U.S. Office of Management and Budget which oversees the information and regulatory affairs of executive branch departments and agencies. While at OMB, Ken's responsibilities included development and implementation of government-wide policies and procedures affecting management of federal information resources. His areas of expertise include information technology, information dissemination, and protection of personal privacy. He has a B.A. in political science from the University of Illinois and an M.S. in governmental administration from George Washington University. Ken is a member of Pi Alpha Alpha, the National Honorary Society for PublicAdministration and Affairs.

EILEEN D. COOKE

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Eileen D. Cooke went to the ALA Washington Office as the Assistant Director in 1964. During those years and since her appointment as Director in 1972, she has established strong working relationships with members of Congress, her colleagues in education, and librarians across the country. Under several administrations, often in the face of presidential opposition, she has played a key role in winning federal support for libraries. She has served on several advisory bodies and has published regularly in library literature. Eileen was the first woman to be elected President of the Joint Council on Educational Telecommunications. After earning a B.S. in Library Science from the College of St. Catherine in St. Paul, Minnesota, Eileen began her library career as a bookmobile librarian in the Minneapolis Public Library and worked in various capacities there until 1963.

DONNA A. DEMAC

As Adjunct Associate Professor in the Interactive Telecommunications Program of New York University since 1982, Donna A. Demac has been teaching, writing, and doing legal work on a wide range of telecommunications issues. From 1980 to September of 1985 she also served as an attorney for the Office of Communication of the the United Church of Christ, speaking before congressional committees and U.N. agencies concerning communications policies. Prior to that she was Associate Fellow for the Overseas Development Council of Washington, D.C., and Henry Luce Journalism Fellow in Asia. Donna earned her J.D. from Boston College Law School in 1979.

SCOTT M. MATHESON, JR.

Scott M. Matheson, Jr. assumed his position as Associate Professor in the College of Law at the University of Utah in July 1985. From March 1981 until returning to Utah he was an associate in the Washington, D.C., law firm of Williams & Connolly, where he represented several news organizations, including **The Washington Post** and **Newsweek**. He has engaged in research on a variety of legal issues for the Salt Lake City firm of Van Cott, Bagley, the U.S. Department of Transportation, and Congressman Wayne Owens, for whom he was chief legislative assistant in 1974. His activities include being campaign manager for Governor Matheson's two successful campaigns. Scott's academic awards and achievements include graduation "With Distinction" from Stanford with a degree in economics in 1975, a Rhodes Scholarship in 1977, and a J.D. from Yale in 1980.

J.D. WILLIAMS

J.D. Williams has been Professor of Political Science at the University of Utah since 1952. He was founding director of the University's Bureau of Community Development and the Hinckley Institute of Politics. J.D. carries his political science into politics, where he has served as a Presidential Elector for the State of Utah and has run for the U.S Senate and State House of Representatives. He authored the college text, **Public Administration: The People's Business.** Recent honors bestowed upon J.D. by the University include the Distinguished Teaching Award in 1983 and the University Professorship to plane the Bicentennial of the Constitution. He is also the recipient of the B'nai Brith Award for contribution to human brotherhood and the Utah Bar Association Award for contributions to a free socieity under law. J.D. received his B.A. from Stanford and his masters and doctorate from Harvard.

TED L. WILSON

Ted Wilson became Director of the Hinckley Institute of Politics after serving consecutive terms as Mayor of Salt Lake City from 1976 to 1985. Prior to that he served as Social Services Director for Salt Lake County in 1975. From 1973 to 1975 Ted was in Washington, D.C., as Administrative Assistant to Congressman Wayne Owens. Until he entered public life, Ted was a teacher of social studies at Skyline High School in Salt Lake City. He has served on the boards of the National League of Cities and the United States Conference of Mayors and was chairman of the Energy and Environment Committee of the United States Conference of Mayors. Ted earned a B.S. in political science from the University of Utah in 1964 and a Master's in Economic Education from the University of Washington in 1969.